

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



REQUEST FOR PROPOSALS

CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR  
INFRASTRUCTURE WORK IN CONNECTION WITH  
THE DC UNITED SOCCER STADIUM

January 21, 2016

**Proposal Due Date:** February 10, 2016 by 2:00 p.m. EST

**Preproposal Conference:** January 28, 2016 at 10:00 a.m. EST

*to be held at:*

**Frank D. Reeves Center  
2<sup>nd</sup> Floor Community Room  
2000 14<sup>th</sup> Street, NW  
Washington, DC 20009**

**Site Visit:** January 28, 2016 at 1:00 p.m.

*Offerors should meet at the intersection of  
Potomac Ave, SW and 1<sup>st</sup> Street, SW*

**Contact:** Courtney Washington  
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Contracts & Procurement Division  
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**Solicitation Number:** DCAM-16-CS-0074

## **Executive Summary**

The Department of General Services (“Department” or “DGS”) is issuing this Request for Proposals to engage a construction manager (the “Construction Manager”) to oversee and implement the infrastructure work associated with the development of the future DC United Soccer Stadium (the “Stadium”), which will be located at 100 Potomac Avenue, SW, Washington, DC (the “Project”). In general, the work that is the subject of this solicitation includes: (i) relocating the water utilities (including supply, waste and storm sewer) on the Stadium site; and (ii) constructing roadway and streetscape improvements at and around the Stadium to include the installation of paving, sidewalks, bioretention, signage, lighting and furniture. DGS has already engaged McKissack & McKissack and AECOM (collectively, the “Architect/Engineer”) to serve as the architects and engineers of record for the project. Drawings and Specifications for the project have been prepared and are attached hereto as **Attachments A and B**. The other utilities (i.e. Pepco, Verizon and Washington Gas) are relocating their own utility plants in and around the Soccer Stadium Site, and such work is not included in the Construction Manager’s scope of work. However, the selected Construction Manager will be required to coordinate its activities with the activities of the other utilities and any early construction activities that may be undertaken by DC United or its contractors.

The construction activities will occur in two separate phases with the utility relocation work being completed no later than September 30, 2016, and the balance of the work (i.e. the road paving, streetscape, signage, bioretention, etc.) completed once the bulk of the stadium construction has been completed and prior to the beginning of the 2018 Major League Soccer season. As such, it is anticipated that the second phase will occur between September 2017 and March 1, 2018. In order to maintain project continuity, the Department expects that the Construction Manager will assign the same project managers to both mobilizations and that such personnel will be available to oversee and coordinate design changes that occur between the two mobilizations. Liquidated damages will be assessed if such personnel are re-assigned.

### **A.1 Background**

The District of Columbia has entered into a Development Agreement with the DC Soccer, LLC (“DC United”), which is the entity designing and building the Stadium. Per the Development Agreement, the District of Columbia is obliged to complete utility relocations on the site assembled for the Stadium (“Stadium Site”) and make improvements to the streetscape in the vicinity of the Stadium. The Development Agreement requires that all utility relocation work, including the water utilities, must be completed by September 30, 2016, and all streetscape work must be completed no later than March 1, 2018. After the water utility work has been completed, the Construction Manager shall continue to attend regular meetings with both the District and DC United in order to understand and to document proposed changes to the streetscape design; and to advise the District as to how the layout of the storm sewer may impact the design so as to avoid the need to relocate components of the storm sewer installed in the Water Utility Construction Phase.

DGS anticipates that, on or about September 2017, the Department will provide the Construction Manager with a notice to proceed for the streetscape construction, based on the then most recent design from the Architect/Engineer. The Construction Manager will be responsible for coordinating the storm sewer inlets that it installed during the Water Utility Construction Phase with the streetscape design and construction. The streetscape construction will include paving, sidewalks, striping, plantings, bioretention, signage and seating.

## **A.2 Project Delivery Method**

The Department intends to implement the Project through a construction manager at-risk approach. The Construction Manager's scope will be divided into three phases: (1) Water Utility Construction Phase; (2) Streetscape Coordination Phase; and (3) Streetscape Construction Phase.

During the Water Utility Construction Phase, the Construction Manager will relocate water utilities. The Construction Manager will coordinate its activities with the relocation efforts of other utilities, such as Pepco, Verizon and Washington Gas, that will be working in the Stadium site during this phase as well as any other separate contractors that may be engaged by the Department or others. The Construction Manager will be required to complete its work in this phase no later than September 30, 2016.

During the Streetscape Coordination Phase, the Construction Manager shall attend meetings with DGS and DC United to follow and to understand proposed changes to the streetscape design so as to avoid the need to relocate components of the storm sewer installed in the Water Utility Construction Phase. The Construction Manager shall regularly update its budget pricing for the Streetscape Construction Phase based on changes to the streetscape design and alert DGS to conflicts in the streetscape design with the storm sewer and other water utilities built during the Water Utility Construction Phase.

During the Streetscape Construction Phase, the Construction Manager will complete the streetscape construction according to the final approved streetscape design. DGS currently anticipates that the notice to proceed with the Streetscape Construction Phase will be given when the Stadium is at approximately 80% complete which is projected to be on or about September 2017. The streetscape work must be Substantially Complete no later than March 1, 2018.

## **A.3 Form of Contract**

The Form of Contract will be issued by Amendment to this RFP. Offerors should carefully review the Form of Contract when submitting their proposal. To the extent there are any inconsistencies between this RFP and the Form of Contract, the Form of Contract shall prevail. Offerors are further advised that they are required to submit their proposal premised upon entering into a contract that is substantially similar to the Form of Contract and that any proposed changes to the Form of Contract must be clearly identified and described in their proposal. **A proposal that fails to specifically identify and describe the requested changes shall be**

**deemed non-responsive.** The Standard Contract Provisions attached hereto as **Attachment J** shall also apply.

#### **A.4 Compensation & Construction Manager Fees**

Offerors will be required to submit with their proposal:

- (i) a Lump Sum Price for the Water Utility Construction Phase;
- (ii) a Management Fee for the Streetscape Coordination Phase;
- (iii) a Construction Management Fee for the Streetscape work (which fee shall include the Construction Manager's home office overhead, profit and general conditions);
- (iv) a Guaranteed Maximum Price ("GMP") for the Streetscape Work; and
- (v) A set of unit prices to address differing site conditions and other Changes.

The Lump Sum Price for the Water Utility Construction Phase should include sufficient funds to cover all of the expenses necessary to complete the Water Utility Construction Phase, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance, necessary permits and other services.

The Management Fee for the Streetscape Coordinate Phase is the Construction Manager's sole compensation for all work performed during the Streetscape Coordination as described herein.

The Guaranteed Maximum Price for the Streetscape Work should include sufficient funds to cover all of the expenses necessary to complete the Streetscape work, including, but not limited to, labor, materials, equipment, bonds, insurance, necessary permits and other services. The GMP should also include the a Construction Management Fee for the Streetscape work (which fee shall include the Construction Manager's home office overhead, profit and general conditions).

Both the Lump Sum Price for the Water Utility Construction Phase and the GMP for the Streetscape Work shall also include sufficient funding to fund items that are not specifically identified on the Drawings and Specifications for the applicable phase but which are reasonably inferable therefrom or necessary for a fully functioning project. All of these price components should be submitted in an Offer Letter in substantially the form of **Attachment C** on the Offeror's letterhead.

#### **A.5 Incentives for On-time; On-Budget Completion & Meeting Workforce Goals**

In the event the Water Utility Construction Phase is both (i) completed no later than September 30, 2016; and (ii) delivered for an amount equal to or less than 103% of the Lump Sum for the Water Utility Construction Phase bid by the Construction Manager, the Lump Sum for the Water Utility Construction Phase shall be increased by two percent (2%). If the Contractor fails to complete the Water Utility Construction Phase by September 30, 2016 or delivers the Water Utility Construction Phase of the Project for more than 103% of the Lump Sum for the Water

Utility Construction Phase bid by the Construction Manager for any reason, the Lump Sum for the Water Utility Construction Phase will be reduced by one percent (1%).

In the event the Streetscape Construction Phase is both (i) completed prior to Substantial Completion of the Stadium; and (ii) delivered for an amount equal to or less than the GMP as originally bid plus three percent (3%), the Construction Manager's fee shall be increased by Ten percent (10%). In the event either or both of these objectives is not met for any reason, the Construction Manager's Fee shall be reduced by Ten percent (10%).

In addition, if the Contractor meets the Workforce Utilization Requirement discussed in **Section A.5** below for the Project as a whole, the Lump Sum for the Water Utility Construction Phase will be increased by one half of one percent (0.5%), and the Construction Management Fee for the Streetscape work will be increased by 5%. In determining whether these goals have been met, the decision will be made irrespective of fault and regardless of whether the cause for failing to achieve these goals was within the Contractor's control.

#### **A.6 Economic Inclusion**

The Department requires that Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent possible and desires that such businesses perform at least Fifty Percent (50%) of the Contract Work under this procurement. Thirty Five Percent (35%) of the Contract Work must be awarded to entities that are certified as Small Business Enterprises by the District of Columbia Department of Small and Local Business Development, and Twenty Percent (20%) of the Contract Work to entities that are certified as Disadvantaged Business Enterprises.

In addition to LSDBE participation as described above, the Department requires that District residents participate in the Project to the greatest extent possible. Prior to the Construction Manager obtaining trade bids for the work, the Department will establish a minimum requirement for the percentage of labor hours worked by District residents on the project (such requirement, the "Workforce Utilization Requirement"). The Workforce Utilization Requirement will be no less than forty percent (40%). Offerors shall submit with their proposals a Workforce Utilization Plan outlining how they intend to increase participation by DC residents in the performance of the work on this Project.

The Department will also require that the selected Contractor and all of its subconsultants, subcontractors, and suppliers, enter into a First Source Employment Agreement with the Department of Employment Services. Please see **Part C** of this RFP for additional information.

The Construction Manager shall also be required to comply with the applicable provisions of the Project Labor Agreement entered into between the District of Columbia and the Washington, D.C. Building and Construction Trades Council and the Mid-Atlantic Regional Council of Carpenters in connection with the Stadium project, a copy of which is provided at **Attachment D** to this RFP.

## **A.7 Selection Criteria**

Proposals will be evaluated in accordance with **Part D** of this RFP. The following evaluation criteria will be used:

- Relevant Experience and Capabilities (40 points)
- Key Personnel (40 points)
- Project Management Plan & Schedule (75 Points)
- Price (45 points)

## **A.8 Procurement Schedule**

The schedule for this procurement is as follows:

- |                                       |                                  |
|---------------------------------------|----------------------------------|
| Issue RFP                             | - January 21, 2016               |
| Pre-proposal Conference               | - January 28, 2016 at 10:00 a.m. |
| Site Visit                            | - January 28, 2016 at 1:00 p.m.  |
| Last Day for Questions/Clarifications | - February 1, 2016               |
| Proposals Due                         | - February 10, 2016              |
| Notice of Award                       | - On or about March 7, 2016      |

## **A.9 Project Schedule**

- |   |                              |
|---|------------------------------|
| Limited Notice to Proceed with Water Utility Construction Phase | - Early March 2016           |
| Council Approval of Contract                                    | - April 15, 2016             |
| Completion of Water Utility Construction Phase                  | - By September 30, 2016      |
| Notice to Proceed with Streetscape Construction Phase           | - Anticipated September 2017 |
| Completion of Streetscape Construction Phase                    | - March 1, 2018              |
| Substantial Completion of the Stadium                           | - Anticipated March 2018     |

## **A.10 Attachments**

<b>Attachment A</b>	Project Documents for Water Utility Construction Phase
<b>Attachment B</b>	Project Documents for Streetscape Construction Phase
<b>Attachment C</b>	Form of Offer Letter
<b>Attachment D</b>	Project Labor Agreement
<b>Attachment E</b>	Tax Affidavit
<b>Attachment F</b>	Davis-Bacon Wage Rates
<b>Attachment G</b>	Bid Guarantee Certification
<b>Attachment H</b>	Past Performance Evaluation Form
<b>Attachment I</b>	Contractor Certification Form
<b>Attachment J</b>	Standard Contract Provisions

## **SECTION B           SCOPE OF WORK**

### **B.1     Scope of Work**

The Construction Manager shall be required to work with DGS and the Architect/Engineer to construct the work related to the water utilities no later than September 30, 2016, and to complete the streetscape construction by March 1, 2018. Without limiting the generality of the foregoing, the Construction Manager shall be required to provide all of the management, personnel, supervision, labor, materials and other services necessary to complete the Project. In general, the Construction Manager's scope of work shall be divided into three phases: (1) The Water Utility Construction Phase, (2) the Streetscape Coordination Phase and (3) the Streetscape Construction Phase.

### **B.2     Water Utility Construction Phase**

The Water Utility Construction Phase will run from the issuance of a notice to proceed through the completion of the water utility construction based on the Drawings and Specifications issued by the Architect/Engineer. During the Water Utility Construction Phase, the Construction Manager will implement the Drawings and Specifications, providing all labor, materials, supervision, and other services as may be necessary to accomplish this task. All work in the Water Utility Construction Phase must be completed by no later than September 30, 2016.

**B.2.1** The Lump Sum price shall include any costs for mobilization for the Water Utility Construction Phase. Because multiple utilities will be undertaking relocation activities in connection with the Stadium project, Offerors should anticipate that there will be periods when they may not be able to access portions of the Stadium Site. Offerors will not be entitled to any remobilization costs unless the Water Utility Construction Phase extends beyond October 31, 2016. As part of the pricing proposal, each Offeror shall provide unit prices as indicated in **Attachment A**. All such unit costs shall include labor, supervision, materials, equipment, overhead and profit.

**B.2.2** The selected Construction Manager shall perform all of the work in first class and workmanlike manner. Any equipment or materials called for in the Drawings and Specifications shall be new unless otherwise approved by DGS in advance and in writing.

**B.2.3** The Construction Manager shall provide submittals as indicated in the Drawings and Specifications to DGS for its review and approval prior to proceeding with the work.

**B.2.4** The Construction Manager shall be responsible for obtaining all job permits and approvals from the Department of Consumer and Regulatory Affairs and other regulatory bodies that are required to perform and complete the Water Utility Construction Phase.



**B.2.5** The Construction Manager's scope of work shall include the installation and provision of such safety barricades and enclosures as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.

**B.2.6** The Construction Manager shall be required to coordinate its work during the Water Utility Construction Phase with other utilities who will be working on the Stadium Site and in the immediate vicinity around the Stadium Site.

**B.2.7** The Construction Manager shall be responsible for directly coordinating all activities during the Water Utility Construction Phase with DC Water, including, but not limited to submittals, shut-offs and other approvals.

**B.2.8** The Construction Manager will be required to verify that the drawings are accurate and coordinate the Water Utility Construction Phase work around the existing conditions. Construction Manager should verify existing conditions as noted on the Drawings and Specifications.

**B.2.9** The costs of any necessary security should be included in the Offeror's bid.

**B.2.10** The Construction Manager will be required to coordinate with the Architect/Engineer on the Water Utility Construction Phase. In furtherance thereof, concurrent with the notice to proceed with the Water Utility Construction Phase, the Department will assign to the Construction Manager its agreement with the Architect/Engineer governing this phase of work (such agreement, the "Water Utility Architect Agreement"). From and after the point of assignment of the Water Utility Architect Agreement, the Construction Manager will be required to manage the efforts of the Architect/Engineer so as to ensure timely responses to RFIs, submittal approvals, etc. By accepting such assignment, the Construction Manager will not assume responsibility for the design, but the Construction Manager will be required to accept responsibility for coordinating the Architect/Engineer's construction administration activities during the Water Utility Construction Phase. As such and as between the Construction Manager and the Department, the Construction Manager will be responsible for delays resulting caused by the Architect/Engineer in responding to submittals and other construction administration issues that may arise during the Water Utility Construction Phase from and after the assignment of the Water Utility Architect Agreement to the Construction Manager.

**B.2.11** The Construction Manager shall maintain sediment and erosion controls around all installed storm sewer inlets from the completion of the Water Utility Construction Phase through substantial completion of the Streetscape Construction Phase.

### **B.3 Streetscape Coordination Phase**

The Streetscape Coordination Phase shall run from the completion of the Water Utility Construction Phase through the start of the Streetscape Construction Phase. During the Streetscape Coordination Phase, the Construction Manager will:

- Attend both internal DGS and Stadium progress meetings (assume two meetings per month).
- Advise on constructability of different features and propose alternatives.
- Advise on potential conflicts between the streetscape design and the storm sewer and other water utilities constructed during the Water Utility Construction Phase.
- Advise on potential changes in cost to different line item included in the proposed GMP for the Streetscape Work.

#### **B.4 Streetscape Construction Phase**

The Construction Manager shall complete the Streetscape Construction Phase work following the issuance of the approved Design and Specifications. The Construction Manager shall supply all management, labor, materials, supervision, equipment and other services necessary to complete the Streetscape Construction Phase prior to March 1, 2018.

**B.4.1** The Construction Manager shall submit a Guaranteed Maximum Price for the Streetscape Construction Phase based on the drawing and specifications attached hereto as **Attachment B**. The GMP shall include any costs for mobilization for the Streetscape Construction Phase.

**B.4.2** The selected Construction Manager shall perform all of the work in first class and workmanlike manner. Any equipment or materials called for in the Drawings and Specifications shall be new unless otherwise approved by DGS in advance and in writing.

**B.4.3** The Construction Manager shall provide submittals as indicated in the Drawings and Specifications to DGS for its review and approval prior to proceeding with the work.

**B.4.4** The Construction Manager shall be responsible for obtaining all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Streetscape Construction Phase.

**B.4.5** The Construction Manager's scope of work shall include the installation and provision of such safety barricades and enclosures as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.

**B.4.6** The Construction Manager will be required to verify that the drawings are accurate and coordinate the Streetscape Construction Phase work around the existing conditions. Construction Manager should verify existing conditions as noted on the Drawings and Specifications.

**B.4.7** The costs of any necessary security should be included in the Offeror's bid.

**B.4.8** The Construction Manager will be required to coordinate with the Architect/Engineer on the Streetscape Construction Phase. In furtherance thereof, concurrent with the notice to proceed

with the Streetscape Construction Phase, the Department will assign to the Construction Manager its agreement with the Architect/Engineer governing this phase of work (such agreement, the “Streetscape Architect Agreement”). From and after the point of assignment of the Streetscape Architect Agreement, the Construction Manager will be required to manage the efforts of the Architect/Engineer so as to ensure timely responses to RFIs, submittal approvals, and the like. By accepting such assignment, the Construction Manager will not assume responsibility for the design, but will be required to accept responsibility for coordinating the Architect/Engineer’s construction administration activities during the Streetscape Construction Phase. As such and as between the Construction Manager and the Department, the Construction Manager will be responsible for delays resulting caused by the Architect/Engineer in responding to submittals and other construction administration issues that may arise during the Streetscape Construction Phase from and after the assignment of the Streetscape Architect Agreement to the Construction Manager.

**B.4.9** The Construction Manager shall install and maintain temporary street lighting consistent with District Department of Transportation’s standards from approximately May 1, 2016 through the activation of new street lighting that will be installed during the Streetscape Construction Phase. Temporary lighting is to be located at any street within the **Attachment B** scope of work that presently has lighting, but will be removed by others as part of the utility upgrades around the stadium.

## **B.5 Supervision & Coordination**

The selected Construction Manager will be required to properly supervise and coordinate its work in each of the Construction Phases. At a minimum, it is envisioned that the Construction Manager will be required to undertake the following tasks:

- Participate and assist in Project/Planning meetings with DGS;
- During each of the Construction Phases, maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- Conduct periodic progress meetings following a Construction Manager generated agenda with the Program Manager;
- Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- Prepare payment requests, verify accuracy and forward to the Department for approval and payment;
- Assemble close-out documents required; and
- Provide assistance to the Department through any applicable warranty periods.

## **B.6 Key Personnel**

In its proposal, each Offeror should identify its key personnel for the Project. Key personnel shall include, at a minimum, the following individuals: (i) the Project Executive; (ii) the Project Manager; and (iii) the Field Superintendent. The Construction Manager will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement. Please provide a table that identifies the specific staff that will be assigned to this Project, the time periods during which the individual will work on the Project, his or her level of effort (i.e. the percentage of time devoted to this project).

## **B.7 Licensing, Accreditation and Registration**

The Construction Manager and all of its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional architect or engineer licensed in the District of Columbia.

## **B.8 Conformance with Laws**

It shall be the responsibility of the Construction Manager to perform under the contract in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies.

## **B.9 Davis-Bacon Act**

The Davis-Bacon Act is applicable to this Project. As such, the Construction Manager and its trade subcontractors shall comply with the wage and reporting requirements imposed by that Act. Offerors are advised that to the extent that the Project Labor Agreement dictates a wage, higher than the applicable Davis-Bacon wage, the Contractor Manager and its trade subcontractors must pay the higher wage.

## **B.10 Apprenticeship Act**

The Apprenticeship Act shall apply to this contract and the Construction Manager and all of its trade subcontractors shall be required to comply with that Act.

## **B.11 Time if of the Essence**

Time is of the essence with respect to the contract. The Water Utility Construction Phase must be completed no later than September 30, 2016, and the Streetscape Construction Phase must be completed no later than March 1, 2018. As such, the Construction Manager must dedicate such personnel and other resources as are necessary to ensure that each phase of the Project is completed on-time and in a diligent, skilled, and professional manner.

## **SECTION C            ECONOMIC INCLUSION**

### **C.1    Preference for Small, Local, and Disadvantaged Business Enterprises**

**General:** Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Offerors that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, being a local business enterprise with its principal office located in an enterprise zone, being a veteran-owned business enterprise, or being a local manufacturing business enterprise. In accordance with these laws, the following preferences shall be awarded in evaluating an Offeror's proposal:

- Three (3) preference points shall be awarded if the Offeror is certified as having a small business enterprise.
- Five (5) preference points shall be awarded if the Offeror is certified as having a resident business ownership.
- Five (5) points shall be awarded if the Offeror is certified as having a longtime resident business.
- Two (2) preference points shall be awarded if the Offeror is certified as a local business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as being a local business enterprise with its principal office located in an enterprise zone.
- Two (2) preference points shall be awarded if the Offeror is certified as a disadvantaged business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a veteran-owned business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a local manufacturing business enterprise.

Offerors may qualify for more than one of these categories, so that the maximum number of points available under this section is twelve (12) points.

#### **C.1.2 Preferences for Certified Joint Ventures**

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a (h).

**C.1.2.1** A copy of the certification acknowledgment letter must be submitted with the Offeror's Proposal.

**C.1.2.2** Any vendor seeking certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development  
ATTN: CBE Certification Program  
441 Fourth Street, NW, Suite 850N  
Washington DC 20001  
(202) 727-3900

**C.1.2.3** All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

## **C.2 Subcontracting Plan**

An Offeror responding to this solicitation which is required to subcontract shall be required to submit with its offer, any subcontracting plan required by law. Offeror's responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with **Attachment J**.

### **C.2.1 Subcontracting Plan Requirements**

#### **Mandatory Subcontracting Requirements**

1. Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
2. If there are insufficient SBEs to completely fulfill the requirement of paragraph 1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
3. A prime Contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of paragraphs 1 and 2 above.
4. Except as provided in paragraphs 5 and 7 below, a prime Contractor that is a CBE and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime Contractor that

performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

5. A prime Contractor that is a certified joint venture and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime Contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
6. Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
7. A prime Contractor that is a CBE and has been granted an offer preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

#### **C.2.2 Subcontracting Plan**

If the prime Contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section (a) of this clause. The plan shall be submitted as part of the offer and may only be amended with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- a. The name and address of each subcontractor;
- b. A current certification number of the small or certified business enterprise;
- c. The scope of work to be performed by each subcontractor; and
- d. The price that the prime Contractor will pay each subcontractor.

#### **C.2.4 Copies of Subcontracts**

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, District of Columbia Auditor and the Director of DSLBD.

#### **C.2.5 Subcontracting Plan Compliance Reporting.**

- (1) The Contractor has a subcontracting plan required by law for this contract; the Contractor shall submit a quarterly report to the CO, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:
  - a. The price that the prime Contractor will pay each subcontractor under the subcontract
  - b. A description of the goods procured or the services subcontracted for
  - c. The amount paid by the prime Contractor under the subcontract;
  - d. A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- (2) If the fully executed subcontract is not provided with the quarterly report, the prime Contractor will not receive credit toward its subcontracting requirements for that subcontract.

#### **C.2.6 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

#### **C.2.7 Notices**

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

#### **C.2.8 Enforcement and Penalties for Breach of Subcontracting Plan**

1. A Contractor shall be deemed to have breached a subcontracting plan required by law, if the Contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
2. Contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.



3. If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **Clause 8 of the SCP, Default.**

### **C.2.9 CBE as Prime Contractor**

A prime Contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of **Section C.2.**

### **C.3 Residency Hiring Requirements for Contractors and Subcontractors**

At least fifty-one percent (51%) of the Offeror's Team and every subconsultant's employees hired after the Offeror enters into a contract with the Department, or after such subconsultant enters into a contract with the Offeror, to work on this project, shall be residents of the District of Columbia.

Upon execution of the contract, the Offeror and all of its member firms, if any, and each of its subcontractors and subconsultants shall submit to the Department a list of current employees that will be assigned to the project, the date that they were hired and whether or not they live in the District of Columbia.

The Offeror shall comply with subchapter III of Chapter II of Title 1, and subchapter II of Chapter II of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Offeror and all member firms, subcontractors, tier subcontractors, subconsultants, and suppliers with contracts in the amount of \$100,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work on the project; (iii) make best efforts to hire at least 51% District residents for all new jobs created by the project; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10<sup>th</sup> of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in program approved by the D.C. Apprenticeship Council; and (vii) trade Contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

The Offeror shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011*, and the rules and regulations promulgated thereunder, including, but not limited to the following requirements:

- (i) At least twenty percent (20%) of journey worker hours by trade shall be performed by District residents;

- (ii) At least sixty percent (60%) of apprentice hours by trade shall be performed by District residents;
- (iii) At least fifty one percent (51%) of the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least seventy percent (70%) of common laborer hours shall be performed by District residents.

#### **C.4 Apprenticeship Act**

The D.C. Apprenticeship Act of D.C. Law 2-156, (“Act”) as amended shall apply to this Project. All subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented. The Contractor shall be liable for any subcontractor non-compliance.

#### **C.5 Project Labor Agreement**

The District and the Washington, D.C. Building and Construction Trades Council and the Mid-Atlantic Regional Council of Carpenters entered into a Project Labor Agreement in connection with the Stadium Project. A copy of the Project Labor Agreement is attached as **Attachment D**. The Construction Manager shall also be required to comply with the applicable provisions of the Project Labor Agreement.

## **SECTION D EVALUATION AND AWARD CRITERIA**

### **D.1 Evaluation Process**

The Department shall evaluate submissions and any best and final offers in accordance with the provisions of this **Section D** and the Department's Procurement Regulations.

### **D.2 Evaluation Committee**

Each submission shall be evaluated in accordance with this **Section D** by an Evaluation Committee. The Evaluation Committee shall prepare a written report summarizing its findings and submit the same to the source selection official. Based on the information submitted by the Offerors in response to this RFP and the report prepared by the Evaluation Committee, the source selection official shall select the Offeror(s) whose submissions are determined by the source selection official to be the most advantageous to the Department.

### **D.3 Oral Presentation**

The Department does not intend to interview Offerors; however, it reserves the right to interview Offerors in the competitive range if necessary. If the Department conducts such interviews, each Offeror within the competitive range shall make an oral presentation to the Department's Evaluation Committee, and participate in a question and answer session. The purpose of the oral presentation and the question and answer session is to permit the Evaluation Committee to fully understand and assess the qualifications of each Offeror and the Offeror's key personnel. The submission will be re-scored at the conclusion of the oral presentation.

#### **D.3.1 Length of Oral Presentation**

Each Offeror will be given up to sixty (60) minutes to make the presentation. At the end of the initial presentation, there will be a break for approximately forty five (45) minutes for the Evaluation Committee to assess the presentation and prepare questions. The Offeror will then respond to questions from the Department's Evaluation Committee for no more than ninety (90) minutes.

#### **D.3.2 Schedule**

The order of presentation will be selected randomly and the Offerors will be informed of their presentation date before the beginning of oral presentations. The Department reserves the right to reschedule any Offeror's presentation at the discretion of the contracting officer.

#### **D.3.3 Offeror Attendees**

The oral presentation will be made by the Offeror's personnel who will be assigned the key jobs for this project. Each Offeror will be limited to seven (7) persons. The job functions of the

persons attending the presentation will be considered to be an indication of the Offeror's assessment of the key areas of responsibility that are deemed essential to the successful completion of the Project.

### **D.3.4 Topics**

The Offeror may present information about its capabilities and special qualifications to serve as a contractor for this Project, including the qualifications of key personnel.

## **D.4 Proposal Evaluation**

Each proposal will be scored on a scale of zero (0) to two hundred (200) points. In addition, Offerors will be eligible to receive up to twelve (12) preference points as described in **Section C.1** of this RFP based on the Offeror's status as a Local, Small or Disadvantaged Business Enterprises. Thus, the maximum number of points possible is two hundred twelve (212). The contract will be awarded to the contractor with the highest evaluated score.

### **D.4.1 Relevant Experience and Capabilities (40 points)**

The Department desires to engage a Construction Manager with the experience and capabilities necessary to realize the objectives set forth in the RFP. This component will be evaluated based on their demonstrated experience in:

- (i) Experience constructing below-grade utility construction including, but not limited to, water and sewer systems;
- (ii) Experience constructing roadwork and streetscape;
- (iii) Experience working in an urban environment;
- (iv) Experience working with the various utility companies and the District's Department of Transportation;
- (v) Knowledge of and access to the local subcontracting market; and
- (vi) Knowledge of the local regulatory agencies and Code Officials.

In evaluating these subfactors, the Department will consider, among other things, the Offeror's track record in delivering projects on-time and on-budget. If the Offeror is a team or joint venture of multiple companies, the Evaluation Panel will consider the experience of each member of the team or joint venture in light of their role in the proposed team or joint venture. This element of the evaluation will be worth up to forty (40) points.

### **D.4.2 Key Personnel (40 points)**

The Department desires that the Construction Manager assign the appropriate number of personnel having the necessary seniority to implement a project of this type. The personnel should have experience working together and each such individual should have the necessary level of experience and education for his or her proposed role. Proposals should identify, at a

minimum: (i) the Project Executive; (ii) the Project Manager; and (iii) the Field Superintendent. The availability and experience of the key individuals assigned to this project will be evaluated as part of this element.

Please provide a table that identifies the specific staff that will be assigned to this project. The table should include: (i) the individual's name (if known); (ii) his or her title; (iii) his or her level of effort (i.e. the percentage of time devoted to this Project by phase); and (iv) the time periods during which the individual will be assigned to the Project. This table should include all personnel that will be assigned to the Project. This element of the evaluation will be worth up to forty (40) points.

#### **D.4.3 Project Management Plan & Schedule (75 Points)**

Offerors are required to submit with their proposal a Management Plan. The Management Plan should clearly explain how the Construction Manager intends to manage and implement the Project through its three phases. It should demonstrate a knowledge of the process and impediments that must be overcome and ensure that sufficient staffing will be provided. At a minimum, the plan should explain how the Construction Manager will implement this project so as to complete the work on-time and within the budgeted funds that are available. In particular, the Management Plan should explain: (i) what steps the Construction Manager will take to avoid and/or mitigate the cost and schedule impact of differing site conditions; (ii) how the Construction Manager will coordinate its work with others (such as DC United, Pepco, Verizon and Washington Gas) that are working in and around the site; (iii) how the Construction Manager will work with the Department and other stakeholders to contain costs as the design evolves; and (iv) how the Construction Manager will manage and price self-performed work.

The Management Plan should also: (i) identify the key personnel and their specific roles in managing the Project; (ii) identify the key milestone dates, provide a description of how these dates will be achieved; and (iii) identify key risks and issues that are implicated by the Project and the Construction Manager's strategy for addresses such issues and risks. The Department will also consider the experience that the Contractor and its team members have working together on similar projects.

Offerors should submit with their Management Plan a CPM schedule that shows the anticipated manner in which each construct phase of the Project will be constructed by the required date. The schedule should show sufficient level of detail so as to demonstrate the Offeror's understanding of the Project and the key issues related to the Project.

This element of the evaluation is worth up to seventy five (75) points).

#### **D.4.4 Price (45 points)**

Offerors will be required to bid the following:

- (i) a Lump Sum Price for the Water Utility Construction Phase;

- (ii) a Management Fee for the Streetscape Coordination Phase;
- (iii) a Construction Management Fee for the Streetscape work (which fee shall include the Construction Manager's home office overhead, profit and general conditions);
- (iv) a Guaranteed Maximum Price for the Streetscape Work; and
- (v) set of unit prices to address differing site conditions and other Changes.

This element of the evaluation will be worth up to forty five (45) points.

## **SECTION E PROPOSAL ORGANIZATION AND SUBMISSION**

This section outlines specific information necessary for the proper organization and manner in which Offerors' Proposals should be proffered. References are made to other sections in this RFP for further explanation.

### **E.1 Submission Identification**

Submissions shall be proffered in a full original proposal (pricing and technical submission); two (2) copies of the pricing proposal; and six (6) hard copies as well as two (2) electronic copies on CD-ROM or USB flash drive of the technical portion of the proposal. The Offeror's original submission shall be placed in a sealed envelope conspicuously marked: "Proposal for Construction Management at Risk Services for Stadium Infrastructure Work." Copies of the pricing and technical submissions shall be labeled accordingly.

### **E.2 Delivery or Mailing of Submissions**

Submissions should be delivered or mailed to:

DC Department of General Services  
Contracts & Procurement Division  
Frank D. Reeves Center  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009  
Attn: Courtney Washington

### **E.3 Date and Time for Receiving Submissions**

Submissions shall be received no later than 2:00 p.m. EST, on February 10, 2016. The Offeror assumes the sole responsibility for timely delivery of its Submission, regardless of the method of delivery.

### **E.4 Submission Size, Organization and Offeror Qualifications**

All submissions shall be submitted on 8 1/2" x 11" bond paper and typewritten. The CPM schedule may be on 11"x17" bond paper, but shall be folded to a size of 8 1/2"x11". Telephonic, telegraphic, and facsimile submissions shall not be accepted. The Department is interested in a qualitative approach to presentation material. Brief, clear and concise material is more desirable than quantity. The submission shall be organized in two volumes as follows:

#### **E.4.1 Technical Proposal (Volume 1)**

The technical proposal shall be organized as follows:

#### **E.4.1.1 Executive Summary**

Each Offer should provide a summary of no more than three (3) pages of the information contained in the following sections.

#### **E.4.1.2 General Team Information and Firm(s) Data**

Each Offeror should provide the following information for the Construction Manager and each of its subconsultants.

- A. Name(s), address(es), and role(s) of each firm (including all sub-consultants)
- B. Firm profile(s), including:
  - i. Age
  - ii. Firm history(ies)
  - iii. Firm size(s)
  - iv. Areas of specialty/concentration
  - v. Current firm workload(s) projected over the next year
  - vi. Provide a list of any contract held by the Offeror where the contract was terminated (either for default or convenience). This list should also identify any contracts that resulted in litigation or arbitration between the Owner and the Offeror. If the Offeror has multiple offices, only contracts held by the office submitting this proposal need be listed.
- C. Description of the team organization and personal qualifications of key staff, including:
  - i. Identification of the single point of contact for the Construction Manager, along with the person's e-mail.
  - ii. Organizational chart illustrating reporting lines and names and titles for key participants proposed by the team.
  - iii. Resumes for each key participant on the team, including definition of that person's role, relevant project experience, and current workload over the next two years.
  - iv. Experience that the key team members have working together.



- v. Please provide a table that identifies the specific staff that will be assigned to this Project, the time periods during which that individual will work on the Project, and his or her level of effort (i.e. the percentage of time devoted to this Project).

#### **E.4.1.3 Relevant Experience and Capabilities**

The Department desires to engage a Construction Manager with the experience necessary to successfully complete the work identified in **Attachments A and B** of this RFP. The Offeror shall submit the following to demonstrate the Offeror's relevant experience and capabilities to perform the work required by this RFP.

A. Detailed descriptions of no more than eight (8) projects that best illustrate the team's experience and capabilities relevant to this Project. On each project description, please provide all of the following information in consistent order:

- (i) The name and location of the project.
- (ii) Name, address, contact person and telephone number for owner reference.
- (iii) A brief description of the project.
- (iv) A short narrative of the scope of the contractor's work on the project.
- (v) The delivery method implemented on the project.
- (vi) The start and end dates for construction.
- (vii) The date of builder's engagement and point during the design process at which builder was engaged (e.g., schematic design 50% complete; schematic design 100% complete, etc.).
- (viii) The initial substantial completion date and initial contract value, also noting the contract type (i.e., GMP, NTE or Lump Sum).
- (ix) The level of completion of design documents that the initial contract value was based on.
- (x) The actual substantial completion date and the final contract value.

B. The Offeror shall ensure that a minimum of three (3) Past Performance Evaluation forms (**Attachment H**) are completed and submitted on behalf of the Contractor directly to Courtney Washington at courtney.washington2@dc.gov by the due date for proposals.

C The Offeror shall ensure that a minimum of two (2) Past Performance Evaluation forms (**Attachment H**) are completed and included in the Contractor's proposal for each proposed subcontractor, as applicable.

D. If the Offeror is a team or joint venture of multiple companies, the Evaluation Panel will consider the experience of each member of the team or joint venture in light of their role in the proposed team or joint venture.

#### **E.4.1.4 Key Personnel**

Offerors shall assign senior personnel to this Project with experience in completing similar projects on-time and on-budget. The availability and experience of the key personnel assigned to this Project will be evaluated as part of this element. The Offeror shall:

A. Identify, at a minimum: (i) the Project Executive, the Project Manager, and the Superintendent responsible for the Project and describe the specific experience of each key personnel working on projects similar to the required work as described in **Attachments A and B** of this RFP;

B. Provide resumes for the key personnel identified above that demonstrates their ability to successfully complete the work required by this RFP;

C. Provide a table that identifies all key personnel that will be assigned to this Project. The table should include: (i) the individual's name; (ii) his or her title; (iii) his or her level of effort (i.e. the percentage of time devoted to this project); and (iv) the time periods during which the individual will be assigned to the Project. This table should include all personnel that will be assigned to the Project.

#### **E.4.1.5 Project Management Plan & Schedule**

Offerors shall submit a Project Management Plan & Schedule. The Project Management Plan should clearly explain how the Contractor intends to manage and implement the Project. It should demonstrate a comprehensive knowledge of the process and provide project specific impediments that must be overcome and ensure that sufficient staffing will be provided.

Each Offeror should also prepare a preliminary project schedule that shows how the Offeror intends to complete the Project in a timely manner. The schedule should be prepared using a critical path method and should show key logic ties and activity durations. The schedule should demonstrate that the Offeror understands the Project and has a workable method to deliver the Project in a timely manner.

#### **E.4.2 Cost Proposal (Volume 2)**

The Cost proposal shall be organized as follows:

**E.4.2.1 Bid Form**

Each Offeror shall submit a bid form substantially in the form of **Attachment C**. Material deviations, in the opinion of the Department, from the bid form shall be sufficient to render the proposal non-responsive.

**E.4.2.2 Contractor Certification Form**

Each Offeror shall complete and submit with its Proposal the Contractor Certification Form attached hereto as **Attachment I**.

**E.4.2.3 Tax Affidavit**

Each Offeror must submit a tax affidavit substantially in the form of **Attachment E**. In order to be eligible for this procurement, Offerors must be in full compliance with their tax obligations to the District of Columbia government.

**E.4.2.4 Bid Bond**

Each Offeror shall submit with their proposal a bid bond in an amount equal to Five Percent (5%) of the sum of the Water Utility Lump Sum Price and the Streetscape GMP, as further explain in Section J.1 below.

## **SECTION F            BIDDING PROCEDURES & PROTESTS**

### **F.1     Contact Person**

For information regarding this RFP please contact:

Courtney Washington  
Contract Specialist  
Contracts & Procurement Division  
Department of General Services  
2000 14th Street, NW  
Washington, D.C. 20009  
(202) 724-3986  
courtney.washington2@dc.gov

Any written questions or inquiries should be sent to Courtney Washington at the email address above.

### **F.2     Preproposal Conference**

A preproposal conference will be held on January 28, 2016 at 10:00 a.m. EST. The conference will be held at the Frank D. Reeves Center, 2<sup>nd</sup> Floor Community Room, 2000 14<sup>th</sup> Street, NW, Washington, DC 20009. Interested Offerors are strongly encouraged to attend.

### **F.3     Explanations to Prospective Offerors**

Each Offeror should carefully examine this Request for Proposals and any and all amendments or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a submission. Should an Offeror find discrepancies or ambiguities in, or omissions from, the RFP and amendments or revisions, or otherwise desire an explanation or interpretation of the RFP, any amendments or revisions, it must submit a request for interpretation or correction in writing. Any information given to an Offeror concerning the solicitation shall be furnished promptly to all other Offerors as an amendment to this RFP if in the sole discretion of the Department that information is necessary in proffering submissions or if the lack of it would be prejudicial to any other prospective Offerors. Oral explanations or instructions given before the award of the contract shall not be binding.

Requests should be directed to Thomas Bridenbaugh at the address listed in Section F.1 no later than the close of business on February 1, 2016. The person making the request shall be responsible for prompt delivery.

#### **F.4 Protests**

Protests shall be governed by Section 4734 of the Department's Procurement Regulations (27 DCMR § 4734). Protests alleging defects in this solicitation must be filed prior to the time set for receipt of submissions. If an alleged defect does not exist in this initial RFP, but was incorporated into the RFP by an amendment or addendum, a protest based on that defect must be filed before the next closing time established for proffering submissions. In all other cases, a protester shall file the protest within ten (10) days after the protester knows or should have known, whichever is earlier, of the facts and circumstances upon which the protest is based. All protests must be made in writing to the Department's Chief Contracting Officer ("CCO") and must be filed in duplicate. Protests shall be served on the Department by obtaining written and dated acknowledgment of receipt from the Department's CCO. Protests received by the Department after the indicated period shall not be considered. To expedite handling of protests, the envelope shall be labeled "Protest".

This section is intended to summarize the bid protest procedures and is for the convenience of the Offerors only. To the extent any provision of this section is inconsistent with the Procurement Regulations, the more stringent provisions shall prevail.

#### **F.5 Contract Award**

This procurement is being conducted in accordance with the provisions of Section 4712 of the Department's Procurement Regulations (27 DCMR § 4712).

#### **F.6 Retention of Submissions**

All submissions shall be retained by the Department and therefore shall not be returned to the Offerors. With the exception of proprietary financial information, the submissions shall become the property of the Department and the Department shall have the right to distribute or use such information as it determines.

#### **F.7 Examination of Submissions**

Offerors are expected to examine the requirements of all instructions (including all amendments, attachments and exhibits) in this RFP. Failure to do so shall be at the sole risk of the Offeror and may result in disqualification.

#### **F.8 Late Submissions: Modifications**

- A. Any submission or best and final offer received at the office designated in this RFP after the exact time specified for receipt shall not be considered.

- B. Any modification of a submission, including a modification resulting from the CCO's requests for best and final offers, is subject to the same conditions as in F.8.A stated above.
- C. The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the submission wrapper or other documentary evidence of receipt maintained by the installation.
- D. Notwithstanding any other provisions of this Request for Proposals to the contrary, a late modification of an otherwise successful submission which makes its terms more favorable to the Department may be considered at any time it is received and may be accepted.
- E. Submissions shall be irrevocable and remain in full force and effect for a period not less than one hundred twenty (120) days after receipt of submissions.

#### **F.9 No Compensation for Preparation of Submissions**

The Department shall not bear or assume any financial obligations or liabilities regarding the preparation of any submissions submitted in response to this RFP, or prepared in connection therewith, including, but without limitation, any submissions, statements, reports, data, information, materials or other documents or items.

#### **F.10 Rejection of Submissions**

The Department reserves the right, in its sole discretion:

- A. To cancel this solicitation or reject all submissions.
- B. To reject submissions that fail to prove the Offeror's responsibility.
- C. To reject submissions that contain conditions and/or contingencies that in the Department's sole judgment, make the submission indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award.
- D. To waive minor irregularities in any submission provided such waiver does not result in an unfair advantage to any Offeror.
- E. To take any other action within the applicable Procurement Regulations or law.
- F. To reject the submission of any Offeror that has submitted a false or misleading statement, affidavit or certification in connection with such submission or this Request for Proposals.

### **F.11 Limitation of Authority**

Only a person with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this RFP is not effective or binding unless made in writing and signed by the CCO or its authorized representative.

### **F.12 Non-Responsive Pricing**

In general, the Department will consider a proposal non-responsive if Offeror's price is greater than one hundred fifty percent 150% of the median price submitted by other Offerors. The Department reserves the right to deem a proposal non-responsive if Offeror's price is greater than one hundred fifty percent 150% of the independent government estimate.

## **SECTION G           INSURANCE REQUIREMENTS**

### **G.1    Required Insurance**

The contractor will be required to maintain the following types of insurance throughout the life of the contract.

**G.1.1** Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. The Construction Manager will be required to maintain this coverage in force for a period of at least three (3) years after substantial completion.

**G.1.2** Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the contractor, or its contractors and subcontractors at or in connection with the Work.

**G.1.3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

**G.1.4** Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Ten Million Dollars (\$10,000,000).

**G.1.5** Builder’s risk insurance written on an “all risk” basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

**G.1.6** Contractor’s pollution legal liability policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project.

### **G.2    Additional Insureds**

Each insurance policy shall be issued in the name of the contractor and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.



### **G.3 Waiver of Subrogation**

All such insurance policies shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

### **G.4 Strength of Insurer**

All insurance policies shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than A- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

## **SECTION J            BONDS**

### **J.1     Bid Bond**

Offerors are required to submit with their proposal a bid bond in the amount of five percent (5%) of the Water Utility Lump Sum Price and the Streetscape GMP. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Alternatively, Offerors may submit a cashier's check or irrevocable letter of credit in lieu of a bid bond. However, in the event an Offeror who is awarded a contract fails to post a payment and performance bond for the full value of the contract, the Offeror shall thereby forfeit the full amount of the cashier's check or letter of credit, and the Department shall collect such funds as liquidated damages. If the Offeror chooses to submit a cashier's check or letter of credit in lieu of a bid bond, the Offeror must complete the form included as **Attachment G** and return, notarized, with the Offeror's bid. Letters of credit must be: (i) unconditional and standby; (ii) irrevocable; (iii) issued by an FDIC insured institution that is reasonably acceptable to DGS; and (iv) able to be drawn on in the Washington, DC metropolitan area. The letter of credit shall provide that it may be drawn upon if the holder of the letter of credit submits a signed statement by DGS's contracting officer stating that the Offeror has failed to enter into a contract consistent with the terms of this procurement and the Offeror's bid submitted thereunder.

### **J.2     Trade Subcontractor Bonds**

The Form of Contract will require that all trade subcontractors provide a payment and performance bond having a penal value equal to one hundred percent (100%) of the cost of the trade subcontract. All such bonds shall be written on a dual-obligee basis.

### **J.3     Contractor's Payment and Performance Bond**

In addition to the trade subcontractor bonds required by Section J.2, the Construction Manager will be required to post a payment and performance bond having a penal value equal to the Lump Sum Price at **the time the Contract is executed.**

**Attachment A**

Available for download at:

<https://leftwichlaw.box.com/s/eisn24vxutk3c5or7o8ubyp18w2i3o80>

**Attachment B**

Available for download at:

*To be issued by addendum.*

**Attachment C**

Attachment B

[Offeror's Letterhead]

[Insert Date]

District of Columbia Department of General Services  
2000 14<sup>th</sup> Street, NW  
Washington, D.C. 20009

Att'n: Mr. Christopher Weaver  
Director

Reference: Request for Proposals  
Construction Management At-Risk Services for Infrastructure Work in  
Connection with the DC United Soccer Stadium (DCAM-16-CS-0074)

Dear Mr. Weaver:

On behalf of [INSERT NAME OF BIDDER] (the "Offeror"), I am pleased to submit this proposal in response to the Department of General Services' (the "Department" or "DGS") Request for Proposals (the "RFP") to provide construction management at-risk services for infrastructure work in connection with the DC United Soccer Stadium. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Bid Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP. The Offeror's proposal, Lump Sum Price (as defined in paragraph A), Management Fee (as defined in paragraph B), Construction Management Fee (as defined in paragraph C), GMP (as defined in paragraph D), and Unit Rates (as defined in paragraph E) are based on the Bid Documents as issued and assume no material alteration of the terms of the Bid Documents (collectively, the proposal, the Lump Sum Price, the Management, the Construction Management Fee, the GMP, and the Unit Rates are referred to as the "Offeror's Bid").

The Offeror's Bid is as follows:

- A. The Lump Sum Price for the Water Utility Construction Phase is: \$ \_\_\_\_\_
- B. The Management Fee for the Streetscape Coordination Phase is: \$ \_\_\_\_\_
- C. The Construction Management Fee for the Streetscape work (which fee shall include the Construction Manager's home office overhead, profit and general conditions) is: \$ \_\_\_\_\_
- D. The Guaranteed Maximum Price ("GMP") for the Streetscape Work is: \$ \_\_\_\_\_

- E. A set of unit prices to address differing site conditions and other Changes (as noted in Attachment A to the RFP):

\$ see attached unit rates

The Offeror acknowledges and understands that the Lump Sum Price is a firm, fixed price to fully complete the work for the Water Utility Construction Phase described in the RFP and attachments thereto and that such amount includes funding for work which is not described in the RFP and attachments thereto but which is reasonably inferable therefrom. The Offeror further acknowledges and understands that the Management Fee for the Streetscape Coordinate Phase is the Offeror's sole compensation for all work performed during the Streetscape Coordination as described in the RFP and attachments thereto and that such amount includes funding for work which is not described in the RFP and attachments thereto but which is reasonably inferable therefrom. The Offeror further acknowledges and understands that the GMP for the Streetscape Work includes sufficient funds to cover all of the expenses necessary to complete the Streetscape work, including, but not limited to, labor, materials, equipment, bonds, insurance, necessary permits and other services. The GMP should also include the a Construction Management Fee for the Streetscape work (which fee shall include the Construction Manager's home office overhead, profit and general conditions).

- F. In addition, the Offeror hereby represents that, based on its current rating with its surety, the indicated cost of a payment and performance bond is [INSERT PERCENTAGE].

The Offeror's Bid is based on and subject to the following conditions:

1. The Offeror agrees to hold its proposal open for a period of at least one hundred and twenty (120) days after the date of the bid.
2. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Bid Documents within ten (10) days of the notice of the award. In the event the Offeror fails to do so, the Department shall have the right to levy upon the Offeror's bid bond.
3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this bid form and bind the Offeror to the terms of the Offeror's Bid. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Bid. In addition to any other remedies that the Department may have at law or in equity, the Department shall have the right to levy upon Bidder's Bid Bond in the event of a breach of this paragraph 3.
4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.

5. The Offeror's proposal is subject to the following requested changes to the Form of Contract: **[INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]**

6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or sub-consultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.

7. This bid form and the Offeror's Bid are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Attachment D**

September 10, 2013

Jason Levien  
DC Stadium, LLC  
2400 East Capitol Street, S.E.  
Washington, D.C. 20003

Dear Mr. Levien:

As you are aware, the District of Columbia ("District") and the Washington, D.C. Building and Construction Trades Council and the Mid-Atlantic Regional Council of Carpenters, acting on their own behalf and on behalf of certain of their respective affiliates and members, have entered into a Project Labor Agreement ("PLA"), a full copy of which is attached hereto and will be executed dated as of the date with this letter agreement. The PLA is designed to facilitate the timely construction of a new soccer stadium ("Stadium") in Buzzard Point and ensure employment and apprenticeship training opportunities for District residents as well as the creation of contracting opportunities for local, small and disadvantaged companies in the District's business community. Article XIX of the PLA, requires that the Development Agreement the District will enter into with DC Stadium, LLC in connection with the development and construction of the Stadium expressly provide that any construction manager or similar entity engaged to construct the Stadium shall execute the PLA or a letter of assent agreeing to be bound by the PLA. This letter agreement is to memorialize and acknowledge DC Stadium, LLC's agreement to the inclusion of the foregoing provision in any development agreement it may enter into with the District in connection with the development and construction of the Stadium.

Sincerely,



Vincent C. Gray  
Mayor

SEEN AND AGREED TO:

DC STADIUM LLC, a Delaware limited liability company

By:



Its Authorized Person

**PROJECT LABOR AGREEMENT**

## PROJECT LABOR AGREEMENT

This Project Labor Agreement (“**Agreement**”) is made and entered into as of the 10<sup>th</sup> day of September, 2013, by and among (i) the District of Columbia (the “**District**”), a public body municipal and corporate acting in its own name and (ii) the Washington, D.C. Building and Construction Trades Council (“**Council**”) and the Mid-Atlantic Regional Council of Carpenters (“**MARCC**”), acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto who have, through their duly authorized officers, executed this Agreement, and any International Unions that become signatory hereto (hereinafter collectively referred to as “**Union**” or “**Unions**”), with respect to the Project defined below. These entities shall hereinafter be collectively referred to as the Parties to this Agreement. All Contractors who execute a Letter of Assent agreeing to be bound by this Agreement shall also be considered Parties to this Agreement.

For purposes of this Agreement, the following additional definitions shall apply:

The term “**Contractor**” shall include all construction contractors of whatever tier, including all subcontractors engaged in onsite construction work within the scope of this Agreement, and shall include any construction manager when it performs construction work within the scope of this Agreement.

The term “**Project**” shall mean: (i) a state-of-the-art, LEED certified outdoor soccer stadium (“**Stadium**”) at the Stadium Site; (ii) certain infrastructure improvements that the District will undertake beyond the Stadium Site in conjunction with the development of the Stadium which shall be limited to (a) the roads and rights-of-way that serve as the perimeter of the Stadium Site; (b) the roadway and sidewalks on Potomac Avenue from South Capitol Street to the Stadium Site; and (c) traffic signals and highway signage that will generally not extend beyond the area north of M Street, SE or east of First Street, SE; and (iii) any ancillary development on the Stadium Site.

The term “**Stadium Site**” shall mean Squares 603S, 605, 607, 611 N and 661 and the northern portion of Square 665.

### **ARTICLE I** **PURPOSE**

Section 1. The District has placed the highest priority for employment and apprenticeship training opportunities for bona fide District residents and the creation of contracting opportunities for local, small and disadvantaged companies in the District’s business community. This Agreement will advance those goals and remove obstacles that may have historically limited the full employment of such local residents or the access of such businesses to the opportunities on projects of this kind. Additionally, the District recognizes the necessity of including comprehensive programs for employment, including recruitment and training of bona fide District residents on the Project.



Section 2. The Parties recognize that completion of the Project without interruption or delay will require a steady supply of skilled labor. Timely construction of the Project will require substantial numbers of employees from construction and supporting crafts possessing the skills and qualifications necessary to complete the Project. The Parties therefore agree to work together to furnish skilled, efficient craft workers for the construction of the Project, as required by this Agreement.

Section 3. The Parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on the Project, to encourage close cooperation between the Contractors and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the Parties to this Agreement. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.

Section 4. In recognition of the special needs of the Project, and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the Parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise in connection with this Agreement. Further, all Contractors agree not to engage in any lockout, and the Unions agree not to engage in any strike, slowdown, or interruption or other disruption of or interference with the work covered by this Agreement.

Section 5. The Parties agree that this Agreement will be made available to and will fully apply to any successful bidder for work performed on the Project who becomes a signatory hereto, without regard to whether that successful bidder performs work at other sites on either a union or a non-union basis, and without regard to whether employees of such bidder are or are not members of any Union. This Agreement shall not apply to any Contractor for work that is performed on work other than the Project. The Unions hereby pledge to work cooperatively on the Project with all Contractors awarded work governed by this Agreement.

Section 6. To accomplish the important purposes of this Agreement, the District will implement this Agreement by requiring that appropriate provisions be included in the bid documents, contract specifications and other contract documents for work on the Project covered by the scope of this Agreement. It is understood by the Parties to this Agreement that the work covered by this Agreement shall be contracted exclusively to Contractors who agree to execute and be bound by the terms of this Agreement, and that all such Contractors shall be Parties to this Agreement. Contractors who are a Party to this Agreement may include businesses certified by the District of Columbia Department of Small and Local Business Development as a Local, Small and Disadvantaged Business Enterprises (“**LSDBE**”). For work performed under this Agreement by LSDBEs, the Unions pledge to work cooperatively with the businesses in order to help achieve the District’s objectives of increasing capacity among historically disadvantaged businesses within the District.

**ARTICLE II**  
**SCOPE OF AGREEMENT**

Section 1. This Agreement shall apply and is limited to the recognized and accepted historical definition of construction work that is performed by and under the direction of the Contractors who have contracts awarded for such work on the Project. Such work shall include site preparation work at the Stadium Site (including the environmental remediation of existing conditions, demolition and infrastructure work the District shall undertake at the Stadium Site), dedicated off-site work, on-site construction work necessary to complete the Project as well as the infrastructure improvements that the District will undertake beyond the Stadium Site in conjunction with the development of the Stadium.

Section 2. The District or any construction manager or similar entity for a portion of the Project that is a Party to this Agreement (“**Construction Manager**”) shall have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any Party to this Agreement; provided, however, only that such bidder is ready, willing and able to become a Party to and comply with this Agreement, should it be designated the successful bidder. All Contractors, including but not limited to all prime contractors and all subcontractors of any tier, who have been or who will be awarded contracts for work covered by this Agreement are required to accept and be bound by the terms and conditions of this Agreement by executing the Letter of Assent (*see* Appendix A hereto) prior to commencing work. A copy of the Letter of Assent executed by the Contractor shall be immediately transmitted to the Council and to the Unions prior to the dispatch of employees to the job site. The District or the Construction Manager, as applicable, shall endeavor to assure compliance with this Agreement by all Contractors engaged to perform work on the Project.

Section 3. The Parties to this Agreement understand and appreciate the need for competition in the construction markets. In order to avoid adverse cost impacts on the Project, the Parties therefore agree as follows:

(a) At least thirty (30) days prior to the scheduled bid receipt date for each trade package, the District or the Construction Manager, as applicable, shall attempt in good faith to obtain letters from at least three (3) subcontractors in which each such prospective subcontractor agrees to bid on the trade package and be subject to the terms of this Agreement (such letters are hereinafter referred to as “**Intent to Bid Letters**”). In the event that three (3) such Intent to Bid Letters are not received from subcontractors that are qualified to perform the work and have the business resources necessary to perform the work identified in the trade package (“qualified bidder”), then the trade package shall be exempt from this Agreement when rebid pursuant to subsection 3(b) below, subject expressly to the requirements of subsection 3(b) and Section 5, below. The District or the Construction Manager, as applicable, shall (i) provide the Council with a copy of the Request for Proposals (“**RFP**”) for each trade package no later than thirty (30) days prior to the scheduled bid receipt date for such trade package and (ii) notify the Council upon receipt of any Intent to Bid Letter received and shall provide the Council with the opportunity to inspect such Intent to Bid Letter upon request.



(b) If at least three (3) reasonable bids on any trade package are not received from qualified bidders, the District or the Construction Manager, as applicable, shall have the right to rebid such trade package and, if rebid, the Contractor awarded the contract will not be bound by or subject to this Agreement and shall not be required to sign a Letter of Assent. The contract with such Contractor shall require the Contractor to comply fully with the requirements of Section 5 of this Article, subject to penalties for non-compliance. No other terms of the original RFP may be changed for the rebid trade package. The District or the Construction Manager, as applicable, shall (i) promptly notify the Council if at least three (3) reasonable bids on any trade package are not received, (ii) provide the Council with the opportunity to inspect all bids submitted upon request, subject to the terms of a mutually agreed-upon confidentiality agreement (iii) provide the Council with a copy of the RFP for any rebid trade package for which three (3) reasonable bids were not received at the same time such RFP is officially released, and (iv) provide the Council, subject to the terms of a mutually agreed-upon confidentiality agreement, with the opportunity to inspect all bids submitted in response to the rebid trade package upon request.

(c) To encourage full and open bidding on all trade packages, the District or the Construction Manager, as applicable, will include in all trade subcontracts a requirement that any disputes with a Contractor over payments claimed to be due the Contractor for work performed on the Project shall be subjected to expedited arbitration. The District and any Construction Manager agree that no special treatment will be accorded to any contractor bidding on a trade package unless the same special treatment is provided to all contractors bidding on the trade package.

Section 4. LSDBEs that are awarded contracts individually or with a total combined value of \$6 million or less will not be bound by or subject to this Agreement and shall not be required to sign a Letter of Assent. The contract with such LSDBE shall require the LSDBE to comply fully with the requirements of Section 5 of this Article, subject to penalties for non-compliance. The District or the Construction Manager, as applicable, shall notify the Council of the value of each contract awarded to an LSDBE at the same time the LSDBE is notified that it was the successful bidder. If the LSDBE's contract exceeds \$6 million plus a ten percent (10%) addition for change orders or, if at the time of the award, the value of the total combined contracts awarded to the LSDBE exceeds \$6 million, then the LSDBE shall no longer be exempt from any provision of this Agreement.

Section 5. Any Contractor who is exempt, by virtue of Article II, Section 3 and/or 4 from any provision of this Agreement, shall not be entitled by virtue of other provisions of this Agreement, to utilize the Agreement's provisions for Union referral of District residents, to participate in the apprenticeship programs, or to participate in any fringe benefit fund sponsored by the Unions signatory to this Agreement. The employees of such exempt Contractor shall have no right to Union representation for any purpose under this Agreement. Each such Contractor shall, nonetheless, be required by contract as described above, to:

(a) satisfy fully all District resident hiring and apprenticeship requirements set forth in this Agreement and required by law, and be subject to all sanctions set forth in this Agreement or by law for failure to satisfy such requirements;



(b) demonstrate that, prior to the award of any contract to a Contractor who is otherwise exempted from this Agreement pursuant to Sections 3 and/or 4 above, it maintains an apprenticeship program that has been approved and registered by the District consistent with applicable District and federal law;

(c) pay its employees, for the duration of the Project, wages that equal the combined value of the wages and fringe benefits that are set forth in the collective bargaining agreement identified in Appendix B hereto (and as it may hereafter be modified) that is applicable to the work to be performed by the Contractor, such agreement to be designated by the Council at least fifteen (15) days prior to the bid date for such work;

(d) pay its employees, for the duration of their work on the Project, overtime and all other economic benefits that are set forth in the collective bargaining agreements identified in Appendix B hereto (and as it may hereafter be modified) that is applicable to the work to be performed by the Contractor. The Council shall identify all such economic benefits at least fifteen (15) days prior to the bid date for such work;

(e) comply with all provisions of Articles IX (Subcontracting), XIV (Hours of Work, Overtime, Reporting Pay and Holidays), XV (Safety and Health), and XVII (Non-Discrimination) of this Agreement;

(f) submit monthly certified payroll to the District or the Construction Manager, as applicable; and

(g) submit, no less often than monthly; written proof of compliance with all other obligations set forth in this Section 5 to the District or the Construction Manager, as applicable.

#### Section 6.

(a) The collective bargaining agreements that will apply to work covered by this Agreement will be identified by name and by specific reference to each signatory Union in Appendix B to this Agreement. The terms of each collective bargaining agreement identified in Appendix B, as currently in effect or as modified in the future by the parties to those agreements shall apply to work performed under this Agreement. No other local, area or national agreements other than those identified in Appendix B as to each signatory Union shall apply to work performed under this Agreement. Any dispute over which collective bargaining agreement identified in Appendix B shall apply shall be resolved in accordance with Article VIII.

(b) Where a term or condition covered by the provisions of this Agreement is also covered by or conflicts with the Union's agreement identified in Appendix B, then the provisions of this Agreement shall supercede and override the terms and conditions of the Union's agreement identified in Appendix B. Where a term or condition is covered by the provisions of the Union's agreement identified in Appendix B and is not covered by this Agreement, then the provisions of the Union's agreement identified in Appendix B shall apply. Notwithstanding the: foregoing, and with the exception of Article VI (Work Stoppages and Lockouts) and Article VIII (Jurisdictional Disputes) of this Agreement, the provisions of the National Agreement of the International Union of



Elevator Constructors shall apply, without exception, to work covered by the National Agreement of the International Union of Elevator Constructors under the scope of this Agreement.

Section 7. This Agreement, including any Appendices hereto, represents the complete understanding of the Parties, and by virtue of having become bound to this Agreement, no Contractor will be obligated to sign any other local, area, or national agreement as a condition of performing work within the scope of this Agreement.

Section 8. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other non-construction operation, work, or function which may occur at the Project site or be associated with the development of the Project such as, but not limited to, engineering, estimating, clerical, survey and layout that is not directly related to performance of construction work by and under the direction of the Contractors, accounting, timekeeping and related services. Furthermore, the provisions of this Agreement shall not apply to any work performed by the District and its agencies and instrumentalities and nothing contained herein shall be construed to prohibit or restrict the District or its employees from performing work not covered by this Agreement on the Project site.

Section 9. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 10. As areas and systems of the Project are inspected and construction tested and accepted by the District or the Construction Manager, as applicable, this Agreement will not have further force or effect on such items or areas, except when a Contractor or other responsible party is directed by the District or the Construction Manager, as applicable, to engage in repairs, modifications, check-out, and warranty functions on an item or area required by its contract during the term of this Agreement.

Section 11. It is understood that the liability of any Contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the District, any Construction Manager, Contractors or any employer.

### **ARTICLE III** **OUTREACH ACTIVITIES**

The Unions will partner with the District in conducting the outreach activities to and in promoting new initiatives to recruit bona fide District residents to apprenticeship programs or to on-the-job employment positions for which they are qualified. To that end, the Unions will assist bona fide District residents in contacting the Joint Apprenticeship Training Committee for the craft(s) or trade(s) in which they are interested. Additionally, to the extent permitted by law, the Unions will assist bona fide District residents who are seeking union jobs on the Project and union membership in assessing their work experience and giving them credit for bona fide, provable past experience in the relevant craft or trade, including experience gained working for non-union contractors. The Unions will put on their rolls and refer qualified bona fide District residents for work on this Project.

**ARTICLE IV**  
**UNION RECOGNITION AND EMPLOYMENT**

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. Authorized representatives of the Unions shall have access to the Project provided they do not interfere with the work of the employees and further provided that such representatives fully comply with the visitor and security rules established for the Project. Each Union that is a party to this Agreement shall have the right to designate a working journey person as a Steward. The Union shall notify the Contractor in writing of the identity of the designated Steward(s) prior to the assumption of such person's duties as Steward. There will be no non-working Stewards. Such designated Steward shall be a qualified worker performing the work of that craft and shall not exercise any supervisory functions. Each Steward shall be concerned with the employees of the Steward's employer and not with the employees of any other employer. The Steward shall not have the right to determine when overtime shall be worked or who shall work overtime.

Section 3. All Contractors shall be required to seek applicants for employment first through the referral procedures of the applicable Union. The Union's referral procedures shall be those set forth in or applicable to each individual Union's collective bargaining agreement (see Appendix B). The Union agrees that there shall be no discrimination against any employee or applicant for employment because of his membership or non-membership in the union or based upon race, creed, color, sex, age, national origin of such employee or applicant or any other protected category contained in the District of Columbia Human Rights Act. No employee covered by this Agreement shall be required to join any Union as a condition of being referred to the Project. After referral, all provisions of Article XIII (Union Security) shall apply. The Unions will use the D.C. Department of Employment Services ("DCDOES") to recruit for referral qualified bona fide District residents.

Section 4. The First Source Employment Agreement Act of 1984, as amended (D.C. Official Code §§ 2-219.01 *et seq.*) ("First Source Act"), currently requires that on projects that receive \$5 million or more in government assistance: (i) at least 20% of journey worker hours by trade shall be performed by District residents; (ii) at least 60% of apprentice hours by trade shall be performed by District residents; (iii) at least 51% of the skilled laborer hours by trade shall be performed by District residents; and (iv) at least 70% of common laborer hours shall be performed by District residents. (*see* D.C. Official Code § 2-219.03(e)(1A)(A)).

Section 5. Notwithstanding any provision to the contrary in their respective referral procedures, the Unions agree to identify those participants in the Unions' respective referral systems who are bona fide District residents for the purpose of meeting the requirements of the First Source Act. A Contractor seeking to hire a bona fide District resident to meet its goal set forth in the First Source Act, will contact the applicable Union dispatch and request a bona fide District resident. The Union will dispatch a bona fide District resident with the job skills specified in the notice (a



“qualified person”) if one is available before qualified non-District residents are referred regardless of the District resident’s place on the referral list. If the Union is unable to dispatch a qualified bona fide District resident within twenty-four (24) hours after a Contractor’s request, the Union shall contact DCDOES to obtain a qualified bona fide District resident to fill the dispatch. All qualified individuals identified by DCDOES shall be directed to the Union for dispatch to the Project. If no qualified individual can be identified by DCDOES within forty-eight (48) hours after the Union’s request to DCDOES, then the Contractor shall solicit applicants for referral by utilizing the Union’s normal referral procedures.

Section 6. In the event the Union is unable to obtain a dispatch within seventy-two (72) hours (Saturday, Sunday and holidays excepted) after the Contractor’s initial request for applicants, then the Contractor may employ applicants from any other available source, including community-based organizations in the District. The Contractor shall inform the Union of the name and social security number of any applicants hired from any other source and shall refer the applicant to the Union for dispatch to the Project.

Section 7. The Unions agree that, on a quarterly basis for the duration of the Project on the last day of each quarter, each Union will provide to DCDOES a report on how many qualified bona fide District residents sought referral to the Project, how many such residents were referred, and if applicable, the reason why any such resident declined referral to the Project. This report will also include the number of qualified bona fide District residents referred to each Union by DCDOES for work on the Project. The Unions will also provide to DCDOES, upon request, a copy of the Unions’ D.C. priority referral list(s) described in Section 5, above. The Unions agree that they will meet with the District and any Construction Manager, as applicable, on a quarterly basis, and more frequently if requested, to review the Union’s efforts with respect to the goals set forth in this Agreement with respect to the recruitment, referral and hiring of District residents.

Section 8. The District is committed to provide opportunities to participate on the Project to emerging business enterprises as well as other enterprises that may not have previously had a relationship with the Unions signatory to this Agreement. To ensure that such enterprises will have an opportunity to employ their “core” employees as journeymen on this Project, the Parties agree that in those situations where a Contractor not a party to a current collective bargaining agreement with the signatory Union having jurisdiction over the affected work is a successful bidder, the Contractor may request by name, and the Union will honor, subject to the rotation set forth below, referral of persons who have applied to the Union for referral to Project work and who demonstrate the following qualifications:

- (a) possess any license required by state or federal law for the Project work to be performed;
- (b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (c) were on the Contractor’s active payroll for at least sixty (60) out of the one hundred twenty (120) calendar days prior to the contract award; and
- (d) have the ability to perform safely the basic function of the applicable trade.



Proof of such qualifications must be presented to the Union from which the "core" employee seeks referral. The first applicant referred to such Contractor will be a journeyman referred by the Union in accordance with the requirements set forth in this Article. The second applicant referred will be one of such Contractor's "core" employees, recognizing that bona fide District residents will have priority referral within this group and that the Contractor is required to meet its commitments under the First Source Act. This process shall be repeated, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from Union referrals in accordance with the requirements set forth in this Article. For the duration of such Contractor's work, this ratio shall be maintained. When such Contractor's workforce is reduced, "core" employees shall be reduced in a manner that will maintain no more than the same ratio of "core" employees to other referrals as was applied in the initial hiring. Nothing in this Section shall relieve a Contractor from complying with the requirements of applicable law including, but not limited to, the First Source Act.

Section 9. The selection of craft foreman and/or general foreman and the number of foremen required shall be entirely the responsibility of the Contractor. Craft foreman shall be designated working foremen at the request of the Contractor.

Section 10.

(a) The Contractors and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center"), a joint Labor-Management Cooperation Trust, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties.

(b) The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Contractors and Unions will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

(c) Each Contractor performing work on this Project shall contribute to the Center the amount of one cent (\$0.01) per hour for each hour worked by each individual employee covered by this Agreement. Payment shall be forwarded monthly to the Center in a form and manner to be determined by the Center's Trustees.

(d) The Center shall function in accordance with, and as provided in the Agreement and Declaration of Trust, and any amendments thereto, and any other of its governing documents. Each Contractor performing work covered by this Agreement approves and consents to the appointment of the Trustees designated pursuant to the Trust Agreement establishing the Center and hereby adopts and agrees to be bound by the terms and provisions of the Trust Agreement.

(e) Contractors who fail to pay contributions or other payments owed to the Center within thirty (30) days of the date when such contributions or other payments are due shall be liable to the Trust for all costs of collection incurred by the Trust, including, attorneys' fees and court costs. The Trustees are empowered to initiate proceedings at law or equity, and to take any other lawful action necessary to collect contributions and all other payments due.

## **ARTICLE V** **MANAGEMENT'S RIGHTS**

Section 1. The Contractors retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall have the right to determine the competency of all employees, the number of employees required subject to the lawful manning requirements of the applicable collective bargaining agreements in Appendix B, and shall have the sole responsibility for selecting employees to be laid off. Contractors shall direct their working forces at their prerogative, including, but not limited to, hiring, promotion, transfer, lay-off, and discipline or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices, and have the right to utilize any methods or techniques of construction. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. It is recognized that installation of specialty items may require utilization, in limited circumstances, of a specialty company to protect a manufacturer's warranty or where the employees working under this Agreement lack the required skills to perform the work. In such cases, the applicable Contractor shall use commercially reasonable efforts to cause the specialty company to become bound to this Agreement and perform all such work consistent with the terms of this Agreement. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

Section 2. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article VII of this Agreement.

## **ARTICLE VI** **WORK STOPPAGES AND LOCKOUTS**

Section 1. During the term of this Agreement there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason (including disputes



relating to the negotiation or renegotiation of the collective bargaining agreements attached as Appendix B hereto, or disputes directed at non-construction services companies or the District at the Stadium Site) by a signatory Union or by any employee, and there shall be no lockout by the Contractor. This provision will not affect the Contractor's right to suspend or terminate work on any portion of the Project for operational or special circumstances provided the Union is given thirty (30) days notice, and such suspension or termination of work shall not be considered a lockout within the meaning of this section.

Section 2. No signatory Union shall sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities that violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

Section 3. No Union shall be liable for acts of employees for whom it has no responsibility. The principal officer(s) of a Union will immediately instruct, order and use the best efforts of his office to cause the employees the Union represents to cease any violations of this Article. A Union complying with this obligation shall not be liable for the unauthorized acts of any employee it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. If there is a work stoppage or lockout dispute the parties agree to provide notice to an arbitrator from the panel, as described in Article VII below. Upon receipt of said notice, the arbitrator or his alternate shall sit and hold a hearing within twenty-four (24) hours if he believes that the work stoppage or lockout dispute still exists, but not sooner than twenty-four (24) hours after notice of such dispute is given to the Union.

## **ARTICLE VII** **DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between the Parties. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all Parties to maintain continuous and uninterrupted performance of work on the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Agreement (other than trade jurisdictional disputes, which shall be governed by Article VIII) shall be considered a grievance and subject to resolution under the following procedures:



Step 1. (a) When any employee subject to the provisions of this Agreement believes he is aggrieved by a violation of this Agreement, he shall, through his Union business representative or job steward, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the specific provision(s) alleged to have been violated. A representative of the Union or the job steward and the work-site representative of the involved Contractor and a representative of the District or the Construction Manager, as applicable, shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall respond to the Union representative in writing (copying the District or the Construction Manager, as applicable) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of these Grievance Procedures, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the specific provision(s) of the Agreement alleged to have been violated.

(b) Should the Union(s) or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Union's principal officer (or his designee) and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator designated from a permanent panel of five (5) arbitrators for this Agreement. The five permanent panel arbitrators shall be selected by mutual agreement of the District, any Construction Managers and the Unions signatory to this Agreement. If the District, any Construction Managers and the Unions are unable to agree upon the five (5) panel members, they shall request the American Arbitration Association to provide them with sufficient separate panels of arbitrators so that five (5) permanent panel members may be selected. Selection of the panel members shall be made by alternately striking names from each panel provided. No more than one name from each panel shall be selected, absent mutual agreement of the Parties. Designation of the arbitrator from the panel to hear any grievance shall be by rotation among the panel members. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties and any party may enter any judgment or award rendered by the arbitrator in a District of Columbia court/forum of competent jurisdiction. All jointly incurred fees and expenses of such Arbitration shall be borne equally by the Contractor and the involved Union(s). Each party shall bear its own attorneys' fees. The arbitrator shall not order nor have the power to order a

party to pay or reimburse the other party for attorneys' fees, expert fees or any other fees incurred in connection with, preparing, presenting or defending its case. The arbitrator shall not award or be empowered to award punitive or exemplary damages.

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. Time is of the essence. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him providing he has jurisdiction to resolve the issues, and he shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The District or the Construction Manager, as applicable, shall be notified of all actions at Steps 2 and 3 and shall be permitted to participate in all proceedings at Steps 2 and 3.

Section 5. If an arbitrator determines that a Union has failed to fulfill its obligations in good faith under Article IV, Sections 4, 5, 7, and 8 or Article X, Sections 2, 3, 5, 6, 7 and 8, the arbitrator may require the Union, per violation, to pay the cost of enrolling one bona fide District resident in a building trades pre-apprentice program. In determining the extent of this specified community outreach, the arbitrator shall consider the nature of the underlying grievance.

#### **ARTICLE VIII** **JURISDICTIONAL DISPUTES**

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved, and such work assignments will be in accordance with the then current Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") approved by the Building and Construction Trades Department, AFL-CIO or any or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department, AFL-CIO.

Section 2. All jurisdictional disputes on the Project, between or among the Unions and Contractors signatory to this Agreement, shall be settled and adjusted according to the Plan. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions party to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow down of any nature, or other disruptive activity arising out of any jurisdictional dispute or interruption in protest, and the Contractor's assignment shall be adhered to until the dispute is resolved. Employees violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the Council and signatory Unions at the offices of the Building and Construction Trades Department, 815 16th Street, NW, Suite 600, Washington, DC 20006, no less than thirty (30) days prior to commencing work unless the Council agrees in writing otherwise or unless emergency conditions exist that require



fewer days' notice to the Council. The District or the Construction Manager, as applicable, will be advised in advance of all such conferences and may participate if they wish. Absent the express written consent of the Council, no work shall begin unless a timely pre-job conference has been conducted.

## **ARTICLE IX** **SUBCONTRACTING**

Except as otherwise provided herein, the District and any Construction Manager shall not contract and no Contractor shall subcontract any work to be done on the Project except to a person who or entity that is or agrees to become party to this Agreement. Any Contractor working on the Project shall, as a condition to working on the Project, become a signatory to and perform all work under the terms of this Agreement.

## **ARTICLE X** **APPRENTICES AND TRAINING**

Section 1. The Parties recognize the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry in the District. The Parties further recognize that apprenticeship and training shall be offered consistent with the applicable signatory Union's collective bargaining agreement (*see* Appendix B) and consistent with the apprenticeship and training programs currently maintained by the Joint Apprenticeship and Training Committees sponsored by the Unions and their signatory contractors.

Section 2. The Parties agree that, subject to any restrictions contained in applicable law, Contractor(s) will employ apprentices in the respective crafts which are performing work on the project, and within the jurisdiction of the craft in which those apprentices are working. The Parties further agree to a goal that apprentices will perform up to twenty-five percent (25%) of the total craft work hours unless the applicable Union's collective bargaining agreement (*see* Appendix B) provides for a greater percentage. The Union agrees to cooperate with the Contractor in furnishing apprentices as requested. Apprentices shall be properly supervised and paid in accordance with this Agreement.

Section 3. Contractors will employ only bona fide District residents as new apprentices (one hundred percent (100%) of all new apprentices shall be bona fide District residents). For purposes of meeting this goal, a "new apprentice" is defined as a bona fide District resident who is indentured on or after the date the Contractor executes a Letter of Acceptance agreeing to be bound by this Agreement. A Contractor failing to meet this goal or demonstrate "good faith" efforts to do so may be referred to binding arbitration as provided for in Article VII, above, for an appropriate resolution that may include monetary sanctions. In no event shall sanctions exceed five percent (5%) of the direct labor costs of the Contractor's construction contract for the Project. For the purpose of resolution of any dispute arising under this Section, the District shall be considered a party-in-interest with full rights of participation in the arbitration proceeding.

Section 4. The Parties recognize that, on projects receiving \$5 million or more in government assistance, the First Source Act currently requires at least 60% of apprentice hours by trade shall be performed by District residents. The Contractor shall reach this goal through the utilization of the referral procedures set forth in this Agreement (where applicable), and through normal apprentice procedures. Individuals who are identified by the Parties, DCDOES and community-based organizations as potentially qualified apprentices, will be referred to the apprenticeship programs for review through the program's normal apprentice procedures.

Section 5. All Contractors and Unions shall provide a report to D.C. Office of Apprenticeship on the number of bona fide District residents who applied for apprenticeship, the number of bona fide District residents selected, and the reason(s) why those residents were not selected. The report shall be provided as the information becomes available to the Contractors and the Unions.

Section 6. All Contractors and Unions shall participate in up to three (3) apprenticeship career fairs to be organized by DCDOES for each year of construction of the Project in a concerted effort to recruit eligible District residents for apprenticeship opportunities. These career fairs shall begin prior to beginning of work on the Project.

Section 7. Contractors and Unions shall encourage the acceptance of all bona fide District residents enrolled in the applicable Union-sponsored preparatory apprenticeship training initiative, who successfully complete the training and qualify for formal registered apprenticeship programs. The Union's Business Manager shall recommend such acceptance in writing directed to the Trustees of the Joint Apprenticeship Training Fund or Committee, as applicable.

Section 8. Only those bona fide District residents who are registered in bona fide apprenticeship programs shall be counted for purposes of determining whether the apprenticeship requirements set forth in this Article have been met.

Section 9. Apprentices shall be employed to perform work in all craft areas in numerical ratios of apprentices to journeypersons that are consistent with the applicable registered apprenticeship program.

## **ARTICLE XI**

### **WAGES AND BENEFITS**

Section 1. Contractors shall pay the required wages and benefits set forth in each Union's collective bargaining agreement (*see* Appendix B) for persons otherwise entitled to receive benefits under such agreements, including any increases that may be negotiated with respect to those agreements in the future. All Contractors agree to be bound by all terms and conditions of the applicable fringe benefit trust agreements and the fringe benefit contribution procedures applicable to all contributing employers for persons otherwise entitled to receive benefits under such agreements. Contributions to employee benefit funds of a labor organization may be required only if, and to the extent, the employee's right to the benefits does not require membership in the labor organization.



Section 2. If a Contractor becomes delinquent in the payment of wages or fringe benefit contributions, the affected Union shall promptly give written notice thereof to such Contractor, and to the District or the Construction Manager, as applicable, specifying the nature and amount of such delinquency as nearly as can be ascertained. Upon receipt of the notice specified herein, the District or the Construction Manager, as applicable, shall withhold payment from any Contractor that has failed to make full payments for wages and fringe benefit contributions required by this Agreement. The amount withheld shall be no less than the amount of the delinquency set forth in the notice.

## **ARTICLE XII** **WORK RULES**

The Contractors agree to be bound by each individual Union's collective bargaining agreement for the work rules.

## **ARTICLE XIII** **UNION SECURITY AND VOLUNTARY CHECK-OFF AUTHORIZATION**

Section 1. All employees covered by this Agreement in the employ of the Contractors shall remain members in good standing of the Union during the term of this Agreement, and all employees hereinafter employed by the Contractors shall become members of the Union within seven (7) days after the date of their employment and shall remain members of the Union during the term of their employment on this Agreement, to the extent allowed or permitted by law.

Section 2. In interpreting good standing, a Contractor shall not discharge an employee for non-membership in the Union (a) if it has reasonable grounds for believing that such membership was not available to the employee on the same terms or conditions generally applicable to other members; or (b) that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Section 3. Upon receipt of a voluntary written authorization from the employee, the Contractor agrees to deduct and forward to the Union any dues checkoff or working assessment required to be paid in accordance with the provisions relating to dues checkoff and working assessments in the Union's collective bargaining agreement.

## **ARTICLE XIV** **HOURS OF WORK, OVERTIME, REPORTING PAY AND HOLIDAYS**

Section 1. (a) The normal workday shall be eight (8) hours and the normal workweek shall be forty (40) hours, Monday through Friday. Regular work hours will be between 5:30 a.m. and 5:30 p.m. plus one-half (½) hour unpaid for lunch approximately mid-way through the shift, which may be changed by mutual agreement of the Union and the Contractor. The District or the Construction Manager, as applicable, may arrange for multiple shifts outside of normal work hours. Saturday may be a make-up day on a voluntary basis for weather-related lost time only, with no less

than eight (8) hours' work opportunity if called in. Make-up days shall be paid as straight time unless otherwise required by law.

(b) If the District or the Construction Manager, as applicable, and the Contractor determine that it would be beneficial to the Project, the Contractor may implement a four (4) ten-hour day workweek or a five (5) ten-hour workweek (exclusive of one-half hour unpaid lunch approximately mid-way through the shift) after providing three (3) days notice to the Union. Once established, a four-ten or five-ten workweek shall remain in effect for at least four (4 or 5) consecutive working days. Regular working hours during the four/ten workweek will be between 5:30 a.m. and 5:00 p.m., Monday through Friday. Saturday may be a make-up day on a voluntary basis for weather-related lost time only, with no less than ten (10) hours work opportunity if called in.

(c) A uniform starting time will be established for each craft or segment of the work. The Union(s) shall be informed of the work starting time set by the Contractor at the pre-job conference.

Section 2. The need to work overtime will be determined by the Contractor. The Contractor will determine the distribution of approved overtime work. Overtime shall be paid consistent with the applicable Union's collective bargaining agreement (*see Appendix B*).

Section 3. When an employee reports for work at the time and place specified by the Contractor and he is not put to work or he works less than two (2) hours, he shall be paid for two (2) hours at the applicable straight time rate of pay. All other minimum pay requirements shall be determined by reference to the applicable Union's collective bargaining agreement (*see Appendix B*).

Section 4. The recognized holidays shall be the day celebrated as such by the Federal Government for New Year's Day, Martin Luther King's Birthday, Inauguration Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day. Payment for holidays shall be determined by reference to the applicable Union's collective bargaining agreement (*see Appendix B*).

Section 5. Unless a longer period or other breaks are required by applicable law, there shall be a paid ten (10) minute break two (2) hours after the start of a shift. There shall be a thirty (30) minute unpaid lunch period to be mutually agreed upon. Payment for and all practices regarding clean-up time shall be determined by reference to the applicable Union's collective bargaining agreement.

Section 6. The Unions will use their best efforts to provide sufficient manpower to work on multiple shifts if the Contractor or the District or the Construction Manager, as applicable, determines that multiple shifts are necessary. Employees on a second shift shall receive eight (8) hours pay for a seven and one-half (7 ½) hour shift and shall also receive ten percent (10%) premium pay for each hour worked. Employees on a third shift shall receive eight (8) hours pay for a seven (7) hour shift and shall also receive ten percent (10%) premium pay for each hour worked. The



Contractor shall notify the Union with two (2) days notice of the starting and quitting time of all second or third shifts in advance of initiation of said shifts.

**ARTICLE XV**  
**SAFETY AND HEALTH**

Section 1. The employees covered by the terms of this Agreement shall at all times while in the employ of the Contractor be bound by the safety rules and regulations as established by the Contractor in accordance with the Construction Safety Act and OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.

Section 2. In accordance with the requirements of OSHA, it shall be the exclusive responsibility of each Contractor on a jobsite to which this Agreement applies, to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the Contractor. Nothing in this Agreement will make any signatory Union liable to any employees or to other persons in the event that injury or accident occurs. Each Contractor will be responsible for supplying all safety equipment to its employees.

**ARTICLE XVI**  
**NON-DISCRIMINATION**

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of any reason prohibited by applicable federal or District law.

Section 2. Any reference in this Agreement to the male gender shall be deemed to include the female gender.

**ARTICLE XVII**  
**GENERAL SAVINGS CLAUSE**

If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal or District government, the Contractor and the Union shall suspend the operation of such Article or provision during the period of its invalidity and shall substitute by mutual consent in its place and stead, an Article or provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the Article or provision in question. Any final determination that any provision of this Agreement violates any law or is otherwise not binding and enforceable, shall have no effect on the validity of the remaining provisions of this Agreement.

**ARTICLE XVIII**  
**TERM OF AGREEMENT**

This Agreement will remain in effect until the development agreement between the District and DC Stadium, LLC for the development and construction of the Stadium at the Stadium Site,

("Development Agreement") is terminated, at which time this Agreement will automatically terminate.

**ARTICLE XIX**  
**DEVELOPMENT AGREEMENT**

The District covenants that the Development Agreement shall expressly require that any construction manager or similar entity engaged to construct the Stadium shall execute this Agreement or a Letter of Assent agreeing to be bound by this Agreement.

**ARTICLE XX**  
**SUMMER YOUTH PROGRAM**

The Council agrees that it will sponsor and finance a six (6) week summer youth program during the summers in which the Stadium is being constructed for fifteen (15) bona fide District residents who are between the ages of 16 and 18. And who have demonstrated an interest in a career in the building trades. Over the course of each summer, the program will include classroom presentations relating to the building trades, visits to the training facility of each Council affiliate, and participation in other activities related to career opportunities in the Washington area building trades. Each youth participant will receive the District of Columbia's minimum wage for all hours of attendance in the program (not to exceed 8 hours per day, 40 hours per week).

**ARTICLE XXI**  
**GOVERNING LAW AND FORUM**

The terms of this Agreement is governed exclusively by the Laws of the District of Columbia and the rules, regulations and procedures of agencies of the District of Columbia. Any dispute arising from this Agreement that is not resolved through Arbitration shall be resolved only in the courts and regulatory agencies of or in the District of Columbia.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 10<sup>th</sup> day of September, 2013.

**DISTRICT OF COLUMBIA**

By: Vincent C Gray  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNIONS:**

Washington, DC Building and Construction Trades Council:

By: James L. Boyd  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #1, Bricklayers and Allied Craft Workers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #26, Electrical Workers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #5, Iron Workers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #657, Laborers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #77, Operating Engineers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Local #891, Operative Plasterers & Cement Masons:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Painters District Council #51:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #5, Plumbers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #201, Reinforced Rodmen:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #30, Roofers & Waterproofers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #100, Sheet Metal Workers:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #669, Sprinkler Fitters:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #602, Steamfitters:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Local #639, Teamsters:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mid Atlantic Regional Council of Carpenter

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Pile Drivers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Concrete Carpenters

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Interior Systems Carpenters

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Millwork Carpenters

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

General Carpenters

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Carpet Layers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Floor Layers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Furniture Installers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Mill Wrights

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment E**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Chief Financial Officer**  
**Office of Tax and Revenue**



**TAX CERTIFICATION AFFIDAVIT**

**THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.**

**Date**

**Authorized Agent**  
**Name of Organization/Entity**  
**Business Address (include zip code)**  
**Business Phone Number**

**Authorized Agent**  
**Principal Officer Name and Title**  
**Square and Lot Information**  
**Federal Identification Number**  
**Contract Number**  
**Unemployment Insurance Account No.**

I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue to release my tax information to an authorized representative of the District of Columbia agency with which I am seeking to enter into a contractual relationship. I understand that the information released will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization.

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia. The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities.

**Signature of Authorizing Agent**

**Title**

The penalty for making false statement is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code §47-4106.

**Attachment F**

General Decision Number: DC160002 01/15/2016 DC2

Superseded General Decision Number: DC20150002

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/08/2016
1	01/15/2016

ASBE0024-007 10/01/2015

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 34.33	13.92

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

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ASBE0024-008 10/01/2015

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER.....	\$ 21.61	5.54

Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems

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ASBE0024-014 10/01/2015

Rates	Fringes
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FIRESTOPPER.....\$ 26.81 5.98

Includes the application of materials or devices within or around penetrations and openings in all rated wall or floor assemblies, in order to prevent the passage of fire, smoke of other gases. The application includes all components involved in creating the rated barrier at perimeter slab edges and exterior cavities, the head of gypsum board or concrete walls, joints between rated wall or floor components, sealing of penetrating items and blank openings.

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BRDC0001-002 05/03/2015

Rates Fringes

BRICKLAYER.....\$ 30.36 9.69

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\* CARP0132-008 01/01/2016

Rates Fringes

CARPENTER, Includes Drywall Hanging, Form Work, and Soft Floor Laying-Carpet.....\$ 27.56 9.18

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CARP1548-001 04/01/2015

Rates Fringes

MILLWRIGHT.....\$ 31.99 9.28

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CARP2311-003 05/01/2015

Rates Fringes

PILEDRIVERMAN.....\$ 28.29 8.85

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ELEC0026-016 06/01/2015

Rates Fringes

ELECTRICIAN, Includes Installation of HVAC/Temperature Controls.....\$ 42.80 15.33

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ELEC0026-017 09/01/2014

Rates Fringes

ELECTRICAL INSTALLER (Sound & Communication Systems).....\$ 27.05 8.58

SCOPE OF WORK: Includes low voltage construction, installation, maintenance and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, VSAT, bypass, CATV, WAN (Wide area networks), LAN (Local area networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

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\* ELEV0010-001 01/01/2016

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 41.90	29.985+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

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IRON0005-005 06/01/2015

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 30.65	18.135

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IRON0201-006 05/01/2015

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 27.50	18.58

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LABO0657-015 06/01/2015

	Rates	Fringes
LABORER: Skilled.....	\$ 22.63	7.31

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer, open caisson, test pit, underpinning, pier hole and ditches, ladders and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and

chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper, demolition.

-----  
MARB0002-004 05/03/2015

	Rates	Fringes
MARBLE/STONE MASON.....	\$ 35.19	15.72

INCLUDING pointing, caulking and cleaning of All types of masonry, brick, stone and cement EXCEPT pointing, caulking, cleaning of existing masonry, brick, stone and cement (restoration work)

-----  
MARB0003-006 05/03/2015

	Rates	Fringes
TERRAZZO WORKER/SETTER.....	\$ 26.75	10.28

-----  
MARB0003-007 05/03/2015

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 21.96	9.35

-----  
MARB0003-008 05/03/2015

	Rates	Fringes
TILE SETTER.....	\$ 26.75	10.28

-----  
MARB0003-009 05/03/2015

	Rates	Fringes
TILE FINISHER.....	\$ 21.96	9.35

-----  
PAIN0051-014 06/01/2014

	Rates	Fringes
GLAZIER		
Glazing Contracts \$2 million and under.....	\$ 24.77	9.85
Glazing Contracts over \$2 million.....	\$ 28.61	9.85

-----  
PAIN0051-015 06/01/2014

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and Drywall Finisher.....	\$ 24.89	9.05

-----  
PLAS0891-005 07/01/2013

	Rates	Fringes
PLASTERER.....	\$ 28.33	5.85

-----  
PLAS0891-006 02/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.61

-----  
PLAS0891-007 08/01/2014

	Rates	Fringes
FIREPROOFER		
Handler.....	\$ 16.50	4.24
Mixer/Pump.....	\$ 18.50	4.24
Sprayer.....	\$ 23.00	4.24

Spraying of all Fireproofing materials. Hand application of Fireproofing materials. This includes wet or dry, hard or soft. Intumescent fireproofing and refraction work, including, but not limited to, all steel beams, columns, metal decks, vessels, floors, roofs, where ever fireproofing is required. Plus any installation of thermal and acoustical insulation. All that encompasses setting up for Fireproofing, and taken down. Removal of fireproofing materials and protection. Mixing of all materials either by hand or machine following manufactures standards.

-----  
PLUM0005-010 08/01/2015

	Rates	Fringes
PLUMBER.....	\$ 39.67	16.60+a

a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

-----  
PLUM0602-008 08/01/2015

	Rates	Fringes
PIPEFITTER, Includes HVAC Pipe Installation.....	\$ 38.89	19.97+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

-----  
ROOF0030-016 05/01/2015

	Rates	Fringes
ROOFER.....	\$ 28.50	11.04

-----  
SFDC0669-002 04/01/2015

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 32.40	18.12

-----  
\* SHEE0100-015 01/01/2016

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 39.79	16.77+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

-----  
SUDC2009-003 05/19/2009

	Rates	Fringes
LABORER: Common or General.....	\$ 13.04	2.80

LABORER: Mason Tender - Cement/Concrete.....	\$ 15.40	2.85
--	----------	------

LABORER: Mason Tender for pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking and cleaning of new or replacement masonry, brick, stone and cement.....\$ 11.67

POINTER, CAULKER, CLEANER, Includes pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking, cleaning of new or replacement masonry, brick, stone or cement.....\$ 18.88

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union



average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**Attachment G**

**Attachment G**

**Certification Letter for Cashier's Check or Irrevocable Letter of Credit**

Offerors who submit a cashier's check or an irrevocable letter of credit ("Alternate Bid Security") in lieu of a bid bond must also submit this certification, properly notarized, with their proposal. By executing this document, Offeror acknowledges that, if awarded this contract, Offeror shall be required to post promptly a payment and performance bond equal to the full value of the contract. In the event Offeror fails to post such payment and performance bond, the Offeror understands and agrees that: (i) the Department shall draw upon the Alternate Bid Security as liquidated damages; (ii) the award and/or contract shall be terminated; (iii) for a period of two (2) years thereafter, the Department will not accept from such Offeror Alternate Bid Security in lieu of a bid bond; and (iv) the Offeror hereby waives the right to protest the termination of any such award or contract. The Offeror further acknowledges and agrees that the damages the Department would experience in the event such award or contract are terminated due to the Offeror's failure to post a payment and performance bond are difficult to determine and that the value of the Alternate Bid Security represents a reasonable estimate of the damages the Department would incur.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

District of Columbia) ss:

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for the District of Columbia, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be \_\_\_\_\_ of \_\_\_\_\_, and that he/she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Attachment H**

PAST PERFORMANCE EVALUATION FORM  
(Check appropriate box)

OFFEROR \_\_\_\_\_

Performance Elements	Excellent	Good	Acceptable	Poor	Unacceptable
Quality of Services/ Work					
Timeliness of Performance					
Cost Control					
Business Relations					
Customer Satisfaction					

1. Name and Title of Evaluator: \_\_\_\_\_

2. Signature of Evaluator: \_\_\_\_\_

3. Name of Organization: \_\_\_\_\_

4. Telephone Number of Evaluator: \_\_\_\_\_

E-mail address of Evaluator: \_\_\_\_\_

5. State type of service received: \_\_\_\_\_

6. State Contract Number, Amount and Period of Performance \_\_\_\_\_

7. Remarks on Excellent Performance: Provide data supporting this observation. Continue on separate sheet if needed)

8. Remarks on unacceptable performance: Provide data supporting this observation. (Continue on separate sheet if needed)

Please submit completed evaluation to [courtney.washington2@dc.gov](mailto:courtney.washington2@dc.gov)



**RATING GUIDELINES**

Summarize Contractor performance in each of the rating areas. Assign each area a rating of 0 (Unacceptable), 1 (Poor), 2 (Acceptable), 3 (Good), 4(Excellent), or ++ (Plus). Use the following instructions a guidance in making these evaluations.

	<b>Quality Product/Service</b>	<b>Cost Control</b>	<b>Timeless of Performance</b>	<b>Business Relations</b>
	<ul style="list-style-type: none"> <li>-Compliance with contract requirements</li> <li>-Accuracy of reports</li> <li>-Appropriateness of personnel</li> <li>-Technical excellence</li> </ul>	<ul style="list-style-type: none"> <li>-Within budget (over/ under target costs)</li> <li>-Current, accurate, and complete billings</li> <li>-Relationship of negated costs to actual</li> <li>-Cost efficiencies</li> <li>-Change order issue</li> </ul>	<ul style="list-style-type: none"> <li>-Meet Interim milestones</li> <li>-Reliable</li> <li>-Responsive to technical directions</li> <li>-Completed on time, including wrap-up and contract administration</li> <li>-No liquidated damages assessed</li> </ul>	<ul style="list-style-type: none"> <li>-Effective management</li> <li>-Businesslike correspondence</li> <li>-Responsive to contract requirements</li> <li>-Prompt notification of contract problems</li> <li>-Reasonable/cooperative</li> <li>-Flexible</li> <li>-Pro-active</li> <li>-effective contractor recommended solutions</li> <li>-Effective snail/small disadvantaged business Subcontracting program</li> </ul>
<b>0. Zero</b>	Nonconformances are comprises the achievement of contract requirements, despite use of Agency resources	Cost issues are comprising performance of contract requirements.	Delays are comprising the achievement of contract requirements, Despite use of Agency resources.	Response to inquiries, technical/ service/administrative issues is not effective and responsive.
<b>1, Unacceptable</b>	Nonconformances require major Agency resources to ensure achievement of contract requirements.	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	response to inquiries, technical/ service/administrative issues is marginally effective and responsive.
<b>2. Poor</b>	Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Costs issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Responses to inquiries, technical/ service/administrative issues is somewhat effective and responsive.
<b>3. Acceptable</b>	Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Responses to inquires, technical/ service/administrative issues is usually effective and responsive.
<b>4. Good</b>	There are no quality problems.	There are no cost issues.	There are not delays.	Responses to inquiries, technical/ service/administrative issues is effective and responsive,
<b>5. Excellent</b>	The contractor has demonstrated an exceptional performance level in some or all of the above categories.			

**Attachment I**

## BIDDER/OFFEROR CERTIFICATION FORM

<b>COMPLETION</b>			
The person(s) completing this form must be knowledgeable about the bidder's/offeror's business and operations.			
<b>RESPONSES</b>			
Every question must be answered. Each response must provide all relevant information that can be obtained within the limits of the law. Individuals and sole proprietors may use a Social Security number but are encouraged to obtain and use a federal Employer Identification Number (EIN). Provide any explanation at the end of the section or attach additional sheets with numbered responses. Include the bidder's/offeror's name at the top of each attached page.			
<b>GENERAL INSTRUCTIONS</b>			
This form contains four (4) sections. Section I concerns the bidder's/offeror's responsibility; Section II includes additional required certifications; Section III relates to the Buy American Act (if applicable); and Section IV requires the bidder's/offeror's signature.			
<b>SECTION I. BIDDER/OFFEROR RESPONSIBILITY CERTIFICATION</b>			
<i>Instructions for Section I: Section I contains eight (8) parts. Part 1 requests information concerning the bidder's/offeror's business entity. Part 2 inquires about current or former owners, partners, directors, officers or principals. Part 3 relates to the responsibility of the bidder's/offeror's business. Part 4 concerns the bidder's/offeror's business certificates and licenses. Part 5 inquires about legal proceedings. Part 6 relates to the bidder's/offeror's financial and organizational status. Part 7 requires the bidder/offeror to agree to update the information provided. Part 8 relates to disclosures under the District of Columbia Freedom of Information Act (FOIA).</i>			
<b>PART 1: BIDDER/OFFEROR INFORMATION</b>			
Legal Business Entity Name:		Solicitation #:	
Address of the Principal Place of Business (street, city, state, zip code)		Telephone # and ext.:	Fax #:
Email Address:		Website:	
Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity and EIN used in the last five (5) years and the status (active or inactive).			
Type:	Name:	EIN:	Status:
1.1 Business Type (Please check the appropriate box and provide additional information if necessary.):			
<input type="checkbox"/> Corporation (including PC)	Date of Incorporation:		
<input type="checkbox"/> Joint Venture	Date of Organization:		
<input type="checkbox"/> Limited Liability Company (LLC or PLLC)	Date of Organization:		
<input type="checkbox"/> Nonprofit Organization	Date of Organization:		
<input type="checkbox"/> Partnership (including LLP, LP or General)	Date of Registration or Establishment:		
<input type="checkbox"/> Sole Proprietor	How many years in business?:		
<input type="checkbox"/> Other	Date established?:		
If "Other," please explain:			
1.2 Was the bidder's/offeror's business formed or incorporated in the District of Columbia?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" to Subpart 1.2, provide the jurisdiction where the bidder's/offeror's business was formed or incorporated. Attach a Certificate or Letter of Good Standing from the applicable jurisdiction and a certified Application for Authority from the District, or provide an explanation if the documents are not available.			
State _____		Country _____	
1.3 Please provide a copy of each District of Columbia license, registration or certification that the bidder/offeror is required by law to obtain (other than those provided in Subpart 1.2). If the bidder/offeror is not providing a copy of its license, registration or certification to transact business in the District of Columbia, it shall either:			
(a) Certify its intent to obtain the necessary license, registration or certification prior to contract award; or			
(b) Explain its exemption from the requirement.			

1.4 If your company, its principals, shareholders, directors, or employees own an interest or have a position in another entity in the same or similar line of business as the Bidder/Offeror, please describe the affiliation in detail.

1.5 If any officer, director, shareholder or anyone holding a financial interest in the Bidder/Offeror has a relationship with an employee of the Department or any District agency for whom the Department is procuring goods or services, please describe the nature of the relationship in detail.

**PART 2: INDIVIDUAL RESPONSIBILITY**

*Additional Instructions for Section I, Parts 2 through 8: Provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).*

Has any current or former owner, partner, director, officer, principal or any person in a position involved in the administration of funds, or currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the bidder/offeror with any government entity:

2.1 Been sanctioned or proposed for sanction relative to any business or professional permit or license?  Yes  No

2.2 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?  Yes  No

2.3 Been proposed for suspension or debarment?  Yes  No

2.4 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?  Yes  No

2.5 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or a plea bargain for:  Yes  No

(a) Any business-related activity; or  
(b) Any crime the underlying conduct of which was related to truthfulness?

2.6 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?  Yes  No

Please provide an explanation for each "Yes" in Part 2.

2.8 In the past ten years has the

**PART 3: BUSINESS RESPONSIBILITY**

Has the bidder/offeror:

3.1 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?  Yes  No

3.2 Been proposed for suspension or debarment?  Yes  No

3.3 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?  Yes  No

3.4 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or plea bargain for:  Yes  No

(a) Any business-related activity; or  
(b) Any crime the underlying conduct of which was related to truthfulness?

3.5 Been disqualified or proposed for disqualification on any government permit or license?  Yes  No

3.6 Been denied a contract award (in whole or in part, for any reason) or had a bid or proposal rejected based upon a non-responsibility finding by a government entity? If so, describe each such occurrence in detail.  Yes  No

3.7 Had a low bid or proposal rejected on a government contract for failing to make good faith efforts on any Certified Business Enterprise goal or statutory affirmative action requirements on a previously held contract?  Yes  No

3.8 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?  Yes  No

Please provide an explanation for each "Yes" in Part 3.

<b>PART 4: CERTIFICATES AND LICENSES</b>	
Has the bidder/offeror:	
4.1 Had a denial, decertification, revocation or forfeiture of District of Columbia certification of any Certified Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for "Yes" in Subpart 4.1.	
4.2 Please provide a copy of the bidder's/offeror's District of Columbia Office of Tax and Revenue Tax Certification Affidavit.	
<b>PART 5: LEGAL PROCEEDINGS</b>	
Has the bidder/offeror:	
5.1 Had any liens or judgments (not including UCC filings) filed against it which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 5.1, provide an explanation of the issue(s), relevant dates, the Lien Holder or Claimant's name, the amount of the lien(s) and the current status of the issue(s).	
5.2 Had a government entity find a willful violation of District of Columbia compensation or prevailing wage laws, the Service Contract Act or the Davis-Bacon Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 5.	
<b>PART 6: FINANCIAL AND ORGANIZATIONAL INFORMATION</b>	
6.1 Has the Bidder/Offeror received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.1, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
6.2 Has the Bidder/Offeror ever been assessed liquidated damages, costs to re-procure, costs to complete, or any other monetary damages under a contract? If so, describe each such assessment in detail.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.2, provide an explanation of the issue(s), relevant dates, the government entity involved, the amount assessed and the current status of the issue(s).	
6.3 Within the last seven (7) years, has the bidder/offeror initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.3, provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "initiated," "pending" or "closed".	
6.4 During the past three (3) years, has the bidder/offeror failed to file a tax return or pay taxes required by federal, state, District of Columbia or local laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.4, provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the bidder/offeror failed to file/pay and the current status of the tax liability.	
6.5 During the past three (3) years, has the bidder/offeror failed to file a District of Columbia unemployment insurance return or failed to pay District of Columbia unemployment insurance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.5, provide the years the bidder/offeror failed to file the return or pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).	
6.6 During the past three (3) years, has the bidder/offeror failed to comply with any payment agreement with the Internal Revenue Service, the District of Columbia Office of Tax and Revenue and the Department of Employment Services?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.6, provide the years the bidder/offeror failed to comply with the payment agreement, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).	
6.7 Indicate whether the bidder/offeror owes any outstanding debt to any state, federal or District of Columbia government.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.7, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
6.8 Has the bidder/offeror been audited by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(a) If "Yes" to Subpart 6.8, did any audit of the bidder/offeror identify any significant deficiencies in internal controls, fraud or illegal acts; significant violations of provisions of contract or grant agreements; significant abuse; or any material disallowance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(b) If "Yes" to Subpart 6.8(a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	

**PART 7: RESPONSE UPDATE REQUIREMENT**

7.1 In accordance with the requirement of Section 302(c) of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-353.02), the bidder/offeror shall update any response provided in Section I of this form during the term of this contract:

(a) Within sixty (60) days of a material change to a response; and

(b) Prior to the exercise of an option year contract.

**PART 8: FREEDOM OF INFORMATION ACT (FOIA)**

8.1 Indicate whether the bidder/offeror asserts that any information provided in response to a question in Section I is exempt from disclosure under the District of Columbia Freedom of Information Act (FOIA), effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531, et seq.). Include the question number(s) and explain the basis for the claim. (The District will determine whether such information is, in fact, exempt from FOIA at the time of request for disclosure under FOIA.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

**SECTION II. ADDITIONAL REQUIRED BIDDER/OFFEROR CERTIFICATIONS**

*Instructions for Section II: Section II contains four (4) parts. Part 1 requests information concerning District of Columbia employees. Part 2 applies to the bidder/offeror's pricing. Part 3 relates to equal employment opportunity requirements. Part 4 relates to First Source requirements.*

**PART 1. DISTRICT EMPLOYEES NOT TO BENEFIT**

The bidder/offeror certifies that:

1.2 No person listed in clause 13 of the Standard Contract Provisions, "District Employees Not To Benefit", will benefit from this contract.

1.3 The following person(s) listed in clause 13 of the Standard Contract Provisions may benefit from this contract. (For each person listed, attach the affidavit required by clause 13.)

(a) \_\_\_\_\_

(b) \_\_\_\_\_

**PART 2: INDEPENDENT PRICE DETERMINATION REQUIREMENTS**

The bidder/offeror certifies that:

2.1 The signature of the bidder/offeror is considered to be a certification by the signatory that:

(a) The contract prices have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any bidder/offeror or competitor related to:

(i) Those prices;

(ii) The intention to submit a bid/proposal; or

(iii) The methods or factors used to calculate the prices in the contract.

(b) The prices in this contract have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid/proposal opening unless otherwise required by law; and

(c) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

2.2 The signature on the bid/proposal is considered to be a certification by the signatory that the signatory:

(a) Is the person in the bidder's/offeror's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above; or

(b) Has been authorized, in writing, to act as an agent for the following principal in certifying that the principal has not participated, and will not participate, in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above:

\_\_\_\_\_

*[Insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the bidder's/offeror's organization]*

(i) As an authorized agent, certifies that the principals named in subparagraph 2.2(b) above have not participated, and will not participate, in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above; and

(ii) As an agent, has not participated and will not participate in any action contrary to subparagraphs 2.1(a)(i) through (a)(iii) above.

2.3 If the bidder/offeror deletes or modifies subparagraph 2.1(b) above, the bidder/offeror must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

2.4 The Bidder/Offeror certifies that there are no other entities related to it that are responding to or bidding on the subject solicitation or invitation to bid. Related entities include, but are not limited to, any entity that shares management positions, board positions, shareholders, or persons with a financial interest in the Bidder/Offeror.

**PART 3: EQUAL OPPORTUNITY OBLIGATIONS**

3.1 I hereby certify that I am fully aware of the contents of Mayor's Order 85-85 and the Office of Human Rights' regulations in Chapter 11 of the DCMR, and agree to comply with them while performing this contract.

**PART 4: FIRST SOURCE OBLIGATIONS**

4.1 I hereby certify that I am fully aware of the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Law 19-84), and agree to enter into a First Source Employment Agreement with the Department of Employment Services if awarded any contract valued at \$300,000 or more which receives funds or resources from the District, or funds or resources which, in accordance with a federal grant or otherwise, is administered by the District government.

4.2 I certify that the Initial Employment Plan submitted with my bid or proposal is true and accurate.

**SECTION III. BUY AMERICAN ACT CERTIFICATION**

*Instructions for Section III: Section III contains one (1) part which should only be completed if goods are being provided that are subject to the requirements of the Buy American Act.*

**PART 1: BUY AMERICAN ACT COMPLIANCE**

1.1 The bidder/offeror certifies that each end product, except the end products listed below, is a domestic end product (as defined in Paragraph 23 of the Standard Contract Provisions, "Buy American Act"), and that components of unknown origin are considered to have been mined, produced or manufactured outside the United States.

\_\_\_\_\_ EXCLUDED END PRODUCTS

\_\_\_\_\_ COUNTRY OF ORIGIN

**SECTION IV. CERTIFICATION**

*Instruction for Section IV: This section must be completed by all bidder/offerors.*

I, [ \_\_\_\_\_ ], as the person authorized to sign these certifications, hereby certify that the information provided in this form is true and accurate.

Name [Print and sign]:	Telephone #:	Fax #:

Title:	Email Address:

Date: \_\_\_\_\_

*The District of Columbia is hereby authorized to verify the above information with appropriate government authorities. Penalty for making false statements is a fine of not more than \$1,000.00, imprisonment for not more than 180 days, or both, as prescribed in D.C. Official Code § 22-2405. Penalty for false swearing is a fine of not more than \$2,500.00, imprisonment for not more than three (3) years, or both, as prescribed in D.C. Official Code § 22-2404.*



**Attachment J**

# District of Columbia Department of General Services Standard Contract Provisions

## GENERAL PROVISIONS (Construction Contract)

### ARTICLE 1. DEFINITIONS

- A. "Government" as used herein means the District of Columbia Department of General Services, (DGS) that is a party to a contract.
- B. "Executive" as used herein means the elected head of the Government as set forth in [Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1)] (Or relevant local law).
- C. "Contracting Officer" as used herein means the Government official authorized to execute and administrate the Contract on behalf of the Government. Within DGS, the Director is the Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.
- D. "Contract Documents" or "Contract" as used herein means Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

**ARTICLE 2. SPECIFICATIONS AND DRAWINGS**—The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the Contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

There shall be no change orders or equitable adjustments for work related to items appearing in either the Contract drawing or specifications.

All Contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the Contract, is binding as though occurring in any or all parts of the Contract. In case of discrepancy:

1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.
2. Applicable Federal, State, and Municipal Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
3. The Contract form, Standard Contract Provisions, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
4. Change Orders have priority over: Addenda, Contract drawings and Specifications.
5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.
6. Special Provisions have priority over: Contract drawings and other specifications.

7. Shown and indicated dimensions have priority over scaled dimensions.
8. Original scale drawings and details have priority over any other different scale drawings and details.
9. Large scale drawings and details have priority over small scale drawings and details.
10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

### **ARTICLE 3. CHANGES**

- A. DESIGNATED CHANGE ORDERS**—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes
1. In the Contract drawings and specifications;
  2. In the method or manner of performance of the work;
  3. In the Government furnished facilities, equipment, materials or services; or
  4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

- B. OTHER CHANGE ORDERS**—Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.
- C. GENERAL REQUIREMENTS**—Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (B) above.

With respect to the notification requirements hereunder, time is of the essence. A failure to provide timely notice constitutes waiver of the claim. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

- D. CHANGE ORDER BREAKDOWN**—Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead or profit will be allowed.

Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.

When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 4 and shall be based upon the breakdown shown in following subsections 1. through 7. The Contractor shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.
2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.
3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.
4. **Rented Equipment**—Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.
5. **Contractor's Equipment**— Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.
6. **Miscellaneous**—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.

7. **Subcontract Work**—Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor's overhead and profit.

#### **ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS**

The Contractor is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

##### **A. DIFFERING SITE CONDITIONS:**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.
2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Contractor.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

##### **B. SUSPENSION OF WORK ORDERED BY THE CONTRACTING OFFICER:**

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for equitable adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contract of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time

prescribed shall constitute waiver of all right to compensation related to the suspension of work by the Contractor.

4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term of condition of this contract.

**C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK:**

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.
3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
  - a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

**ARTICLE 5. TERMINATION**

**TERMINATION GENERALLY**-Termination, whether for default or convenience, is not a Government claim. The Contracting Officer may terminate a contract for default, in whole or in part, if the termination is in the best interests of the Government, and the Contractor does any of the following:

- (a) Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;
- (b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
- (c) Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;
- (d) Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;
- (e) Fails to perform any of the other provisions of the contract;
- (f) Materially deviates from the representations and capabilities set forth in the Contractor's response to the solicitation.

A termination for default is a final decision of a Contracting Officer. In order to contest a termination for default, the Contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract

provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the Contracting Officer must occur prior to 90 days from the date of the Contracting Officer's final decision.

**DELAYS**—If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the Government or may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the Government resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed and accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and
2. The Contractor, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time far completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.

If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the Government provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The Government may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

## **ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT**



- A.** The performance of work under the Contract may be terminated by the Government in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B.** After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
  2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
  3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
  4. Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.
  6. Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer
    - a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and
    - b. The completed, or partially completed plans, drawings information and other property which, if the Contract had been completed, would have been required to be furnished to the Government.
  7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:
    - a. Shall not be required to extend credit to any purchaser, and
    - b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and
    - c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.

8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.
10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.
11. "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

At any time after expiration of the plant clearance period, as defined above, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

- C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Subject to the provisions of C above, and subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting

Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

- E.** In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:
1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
    - a. The cost of such work;
    - b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
    - c. A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.
  2. The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.
- F.** The total sum to be paid to me Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further

reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E.1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to B.7 above.

- G.** The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the Government shall pay to the Contractor the following:
1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
  2. If an appeal had been taken, the amount finally determined on such appeal.
- H.** In arriving at the amount due the Contractor under this Article there shall be deducted:
1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
  2. any claim which the Government may have against the Contractor in connection with the Contract; and
  3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.
- I.** If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.
- J.** The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the Government; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

- K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

## ARTICLE 7. DISPUTES

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the Government.

(1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(a) All claims by a Contractor against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.

(b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.

(d) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Government for an amount equal to the unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(e) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Contractor's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.

(f) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Contractor knew or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.

(g) The parties agree that there shall be no claims for unabsorbed home office overhead.

(2) The Contractor's claim shall contain at least the following:

(a) A description of the claim and the amount in dispute;

(b) Any data or other information in support of the claim;

(c) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(d) The Contractor's request for relief or other action by the Contracting Officer.

(e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.

(3) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.

(4) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the Government against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the Government, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.

(b) (1) All claims by the Government against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Contractor.

(2) The decision shall be supported by reasons and shall inform the Contractor of his or her rights. Specific findings of fact shall not be required.

(3) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(4) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.

(5) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**ARTICLE 8. PAYMENTS TO CONTRACTOR**—The Government will pay the contract price or prices as hereinafter provided in accordance with Government regulations.

The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:

1. If such consideration is specifically authorized by the Contract;
2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and
3. If the Contractor furnishes to the Contracting Officer an itemized list.

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the Government. The amount shall not exceed ten percent (10%) of the partial payment. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefore without retention of a percentage, less authorized deductions.

All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the Contract.

Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation at a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

**ARTICLE 9. TRANSFER OR ASSIGNMENT**—Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor to any other party without the written consent of the Contracting Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the Government may for such cause terminate the right of the Contractor to proceed in the same manner as provided in Article 5 herein, and the Contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby.

#### **ARTICLE 10. MATERIAL AND WORKMANSHIP**

- A. GENERAL**—Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition., and the Contractor may use any equipment, material, article or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.
- B. SURPLUS MATERIALS USE**—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the Government. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.
- C. GOVERNMENT MATERIAL**—No materials furnished by the Government shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the Government of all materials furnished by the Government to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the Government for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.
- D. Plant** —The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including



lighting required for night work as directed, as a Contract requirement. All equipment, tools, formwork and staging used on the project shall be of sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project or adjacent property. When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools and equipment and reason for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If after trial use of the substituted methods, tools and equipment, the Contracting Officer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools and equipment.

- E. CAPABILITY OF WORKERS-** All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing:
- F. CONFORMITY OF WORK AND MATERIALS**—All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, material and construction requirements shown or intended by the drawings and specifications.

When materials, products or work cannot be corrected, written notice of rejection will be issued. Rejected materials, products and work shall be eliminated from the project and acceptably replaced at Contractor's expense. The Contracting Officer's failure to reject any portion of the project shall not constitute implied acceptance nor in any way release the Contractor from Contract requirements.

- G. UNAUTHORIZED WORK AND MATERIALS**—Work performed or materials ordered or furnished for the project deviating from requirements and specifications without written authority, will be considered unauthorized and at Contractor's expense. The Government is not obligated to pay for unauthorized work. Unauthorized work and materials may be ordered removed and replaced at Contractor's expense.

**ARTICLE 11. INSPECTION AND ACCEPTANCE**—Except as otherwise provided in the Contract, inspection and test by the Government of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

The Contractor shall, without charge, replace any material and correct any workmanship found by the Government not to conform to Contract requirements and specifications, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises at Contractor's expense.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government:

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or
2. May terminate the Contractor's right to proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the Government, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

Should it be considered necessary or advisable by the Contracting Officer at any time before acceptance of the work, either in part or in its entirety, to make an examination of work completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material to do same. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted an equitable extension of time.

Unless otherwise provided in the Contract, acceptance by the Government will be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guaranty.

**ARTICLE 12. SUPERINTENDENCE BY CONTRACTOR**—The Contractor shall give his personal superintendence to the performance of the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work site at all times during progress, with authority to act for him.

**ARTICLE 13. PERMITS AND RESPONSIBILITIES**—The Contractor shall, without expense to the Government, be responsible for obtaining any necessary licenses, certificates and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occurs as a result of his fault or negligence. He shall take proper safety, health and environmental precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

**ARTICLE 14. INDEMNIFICATION**—

- A. The Contractor shall indemnify and save harmless the Government and all of its officers, agents and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated or performed under the Contract.

- B. Disputes between the Contractor and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by the Contractor to a third party shall be resolved exclusively between the Contractor and the third party; the Contractor shall permit no pass-through suits to be brought against the Government by a third party in the Contractor's name. However, nothing herein shall be construed to prevent the Contractor from paying a subcontractor's claim and seeking a timely equitable adjustment hereunder.

**ARTICLE 15. PROTECTION AGAINST TRESPASS**—Except as otherwise expressly provided in the Contract, the Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the Contracting Officer.

**ARTICLE 16. CONDITIONS AFFECTING THE WORK**

- A. **GENERAL**—The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work as specified without additional expense to the Government. The Government assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the Government is expressly stated in the Contract.
- B. **WORK AND STORAGE SPACE**—Available work and storage space designated by the Government shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space. If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the Government.
- C. **WORK ON SUNDAYS, LEGAL HOLIDAYS AND AT NIGHT**—No work shall be done at any time on Sundays or legal holidays or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer and pursuant to the requirements of the Police Requirements of the Government.
- D. **EXISTING FEATURES**—Subsurface and topographic information including borings data, utilities data and other physical data contained in the Contract or otherwise available, are not intended as representations or warranties but are furnished as available information. The Government assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.
- E. **UTILITIES AND VAULTS**—The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

For any underground utility or vault encountered, the Contractor shall immediately notify the Contracting Officer and take necessary measures to protect the utility or vault and maintain the service until relocation by owner is accomplished. No additional payment will be made for the encountering of these obstructions.

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding or otherwise restoring as may be directed, at the Contractor's sole expense.

Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

No compensation, other than authorized time extensions, will be allowed the Contractor for protective measures, work interruptions, changes in construction sequence, changes in methods of handling excavation and drainage or changes in types of equipment used, made necessary by existing utilities, imprecise utility or vault information or by others performing work within or adjacent to the project.

- F. SITE MAINTENANCE**—The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the Government. Trash containers shall be furnished, maintained and emptied by the Contractor to the satisfaction of the Contracting Officer. Excavated earthwork, stripped forms and all other materials and debris not scheduled for reuse in the project shall be promptly removed from the site.

The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense to the Government. If the Contractor fails to comply with this order, the Contracting Officer may require the work to be done by others and the costs will be charged to the Contractor.

Upon completion of all work and prior to final inspection, the Contractor shall clean up and remove from the project area and adjacent areas all excess materials, equipment, temporary structures, and refuse, and restore said areas to an acceptable condition.

- G. PRIVATE WORK**—Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting Government projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.
- H. GOVERNMENT NOISE CONTROL ACT OF 1977**—The contractor shall be in strict compliance with [D.C. Law 2-53, Government of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C.Register 5293.] (Or relevant local law)

**ARTICLE 17. OTHER CONTRACTS**—The Government may undertake or award other contracts for additional work and the Contractor shall fully cooperate with such other contractors and Government employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. It is the duty of the Contractor to coordinate its activities with all third parties, including, but not limited to utilities, who may affect the Contract work hereunder. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. The Government assumes no liability, other than authorized time extensions, for Contract delays and damages resulting from delays and lack of progress by others. The Contractor shall make no claim against the Government for delay or damages resulting from the actions of third parties, including, but limited to utilities.

**ARTICLE 18. PATENT INDEMNITY**—Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Federal Government to be kept classified or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal, by or for the account of the Government, of supplies furnished or construction work performed hereunder.

**ARTICLE 19. ADDITIONAL BOND SECURITY**—If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the Government, or if any such surety fails to furnish reports

as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by the Contract. Provided that upon the failure of the Contractor to furnish such additional security within ten (10) days after written notice so to do, all payments under the Contract will be withheld until such additional security is furnished.

**ARTICLE 20. COVENANT AGAINST CONTINGENT FEES**—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**ARTICLE 21. APPOINTMENT OF ATTORNEY**—The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the Government and his successors in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the Government, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Contractor expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the Contractor failed to receive a copy of such process, notice, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading or other papers addressed to the Contractor at the address stated in the Contract.

**ARTICLE 22. GOVERNMENT EMPLOYEES NOT TO BENEFIT** — Unless a determination is made as provided herein, no officer or employee of the Government will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any Government employee authorized to execute contracts in which they or an employee of the Government will be personally interested shall be void, and no payment shall be made thereon by the Government or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A Government employee shall not be a party to a contract with the Government and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the Government's needs cannot reasonably otherwise be met. [DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations] (Or relevant local law). The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

**ARTICLE 23. WAIVER**—No Governmental waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Government be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Government in writing.

## ARTICLE 24. BUY AMERICAN

- A. AGREEMENT**—In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.
- B. DOMESTIC CONSTRUCTION MATERIAL**—“Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material. -
- C. DOMESTIC COMPONENT**—A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.
- D. FOREIGN MATERIAL** – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

## ARTICLE 25. TAXES

- A. FEDERAL EXCISE**—Materials, supplies and equipment are not subject to the Federal Manufacturer’s Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the Government under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser’s certificate in the form prescribed by the U.S. Internal Revenue Service.
- B. SALES AND USE TAXES**—Materials which are physically incorporated as a permanent part of real property are not subject to Government Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor’s Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the Government. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the Government permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the Government that no sum in reimbursement of such tax was included in the Contract or else that the Government has received a credit under the Contract in an amount equal to such tax.

Government Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project. [See Government of Columbia Sales and Use Tax Administration Ruling No. 6] (Or relevant local law).

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the provisions of [D.C. Law 9-260] (Or relevant local law), as amended, codified in [D.C. Code 46-103] (Or relevant local law), Employer Contributions, prior to award.

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the applicable tax filing and licensing requirements set forth in [D.C. Code, Title 47, Taxation and Fiscal Affairs] (Or relevant local law), prior to contract award.

**ARTICLE 26. SUSPENSION OF WORK**—The Contracting Officer may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer in the administration of the Contract, or by his failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), an adjustment will be made for an increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Article for any suspension, delay or interruption to the extent:

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or
2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

## **ARTICLE 27. SAFETY PROGRAM**

- A. GENERAL**—In order to provide safety controls for the protection of the life and health of Government and Contract employees and the general public; prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all applicable Federal and local laws governing safety, health and sanitation including the Safety Standards, Rules and Regulations issued by the American National Standards, U. S. Department of Labor, U. S. Department of Health and Human Services, [D.C. Minimum Wage and Industrial Safety Board] (Or relevant local law) and the latest edition of "Manual of Uniform Traffic Control Devices" issued by the Federal Highway Administration.

The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary.

The Contractor shall designate one person to be responsible for carrying out the Contractor's obligation under this Article.



The Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease, and/or damage to property, materials, supplies, and equipment incident to work performed under the Contract. Copies of these reports shall be furnished to the Contracting Officer within two working days after occurrence.

The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

This Article is applicable to all subcontractors used under the Contract and compliance with these provisions by the subcontractors will be the responsibility of the Contractor.

*(In Contracts involving work of short duration or of non-hazardous character, the following Section B. will be deleted by Special Provision)*

**B. CONTRACTOR'S PROGRAM SUBMISSION**—Prior to commencement of the work, the Contractor shall:

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.
2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

**ARTICLE 28. RETENTION OF RECORDS**—Unless otherwise provided in the Contract, or by applicable statute, the Contractor, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract.

**ARTICLE 29. RECOVERY OF DEBTS OWED THE GOVERNMENT**---The Contractor hereby agrees that the Government may use all or any portion of any payment, consideration or refund due the Contractor under the Contract to satisfy, in whole or part, any debt due the Government.

**ARTICLE 30. ADMINISTRATIVE LIQUIDATED DAMAGES**---In addition to any other liquidated damages provided for in the Contract, the Contractor hereby agrees that the Government may assess administrative liquidated damages for the Contractor's failure to submit when due any deliverable required by the Contract. Unless otherwise prescribed by the Contracting Officer, the rate of the administrative liquidated damages shall be \$250 per day until the required deliverable is received and accepted by the Government. The Government's remedies for failure to comply with the Contract terms and conditions are cumulative and not exclusive. Nothing herein shall be construed to limit the Government's ability to terminate the Contractor for the failure to submit Contract deliverables when due.

**ARTICLE 31. FORCE MAJEURE**---If the Contractor, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Contractor may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Contractor must provide the Contracting Officer written notice of its

inability to perform as well as a description of the force majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Contractor's assertion of its inability to perform. If the Contracting Officer agrees that the Contractor is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Contractor is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Government due to force majeure.